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OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980; THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980; AND THE BUS REGULATORY REFORM ACT OF 1982

(98-29)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

OCTOBER 25, 26, AND NOVEMBER 16, 1983

Printed for the use of the
Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
30-536 O WASHINGTON : 1984

A641-14

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OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980: THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980; AND THE BUS REGULATORY REFORM ACT OF 1982

TUESDAY, OCTOBER 25, 1983

House of Representatives,
Subcommittee on Surface Transportation,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:22 a.m., in room 2167, Rayburn House Office Building, Hon. Glenn Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the Subcommittee on Surface Transportation will come to order.

About 6 years ago, the Interstate Commerce Commission began aggressive administrative policies to lessen regulation in the motor carrier industry. It stirred up major controversy and resulted in the Motor Carrier Act of 1980. The act was the most drastic revision of motor carrier regulation in 45 years. Three years later, we seem to be involved in a situation where the Commission is again following the same aggressive administrative policies to lessen regulation.

This is the third year that the subcommittee has held oversight hearings. In the first two sets of hearing, the subcommittee was told that things were not going well in all segments of the industry. Various reasons were advanced for the situation. Initially, it was recession. Last year, the recession was blamed again by some of the witnesses. Others began telling the committee that the ICC was not properly implementing the Motor Carrier Act. Today, members of the industry are going to tell us that the Commission is improperly administering the act and that the effects are disastrous to the industry.

The subcommittee intends to review these allegations very closely and to explore and examine these matters with the Commission and other agencies at hearings to be held in mid-November.

The witness list today is quite extensive, so we will begin with our first witness, who is George Zigich, the representative for the American Trucking Association. He will be accompanied by Dr. Irwin Silberman.

First, let me ask Mr. Snyder—Gene, do you have some remarks?

Mr. Snyder. Mr. Chairman, I do have prepared remarks, but I just want to compliment you for having these hearings to give us an opportunity to reflect upon what we have done and how it has impacted on the industry and how it has been interpreted by ICC and how that interpretation goes along with what we intended in the Congress.

I ask unanimous consent to insert my prepared statement into the record.

Mr. **Anderson**. Without objection, so ordered.

[Mr. Snyder's statement follows:]

STATEMENT OF HON. GENE SNYDER

Mr. Chairman, today we are starting two days of hearings dealing with regulation of trucking in general, household goods, and the intercity bus industry. There will be a follow-up hearing to take testimony from the Interstate Commerce Commission and other Government agencies roughly a month from now. Of course, we are also going to have a session on bus axle weights this coming Thursday, but I'll withhold my comments on that subject until that time unless it comes up earlier in our hearings.

These are important hearings, Mr. Chairman, because they deal with a very difficult and delicate process—the easing up of regulation where it has proved to be a problem, while retaining regulation where it continues to appear warranted. This job is made all the more difficult by the fact that we are relying on an independent regulatory agency to carry out our intent.

As most of the members will remember, the Interstate Commerce Commission was proceeding with its own agenda to deregulate the trucking industry prior to enactment of the Motor Carrier Act of 1980, while at the same time pitting the House and Senate against each other. We thought we put an end to this with the Motor Carrier Act, a carefully crafted compromise that was appropriately referred to as a "delicate balance". We thought we made it clear that Congress, and not the Interstate Commerce Commission, was going to call the shots. We thought we had admonished the Interstate Commerce Commission to not go beyond the explicit directives given to it in the Motor Carrier Act.

Unfortunately, the Commission may not have gotten the message. It appears that the Commission may be going off on its own and pursuing its own deregulation objectives, once again trying to pit the two Houses of Congress against each other. Based on some of my own observations, I think we have reached the point where the burden of proof has shifted to the Commission to justify its actions and to demonstrate that it has not gone beyond the intent of Congress.

Mr. Chairman, I have just one final comment. When we passed the Motor Carrier Act of 1980, we put in this requirement for oversight hearings every year for five years. This wasn't supposed to be window dressing. By that language, I think we were holding out the statutory promise that we intended to be very, very careful in making sure that the balance provided in the Act would be preserved in practice. In approaching these hearings, we ought to be prepared to pursue that intention and to restate the further promise that it implies: If we find something that's broke, we're going to fix it.

Mr. **Anderson**. Mr. Hammerschmidt has an opening statement also, I believe.

Mr. **Hammerschmidt**. Mr. Chairman, in the absence of our very distinguished ranking member, Mr. Shuster, I do have a very short opening statement.

Mr. Chairman, we have an impressive array of witnesses here today, and therefore, a heavy agenda. I think it is all to the good, in view of the importance of this subject, of course. I will not take a great deal of time in my opening remarks, but I do want to make the point that there seems to be developing a consensus here to the effect that the Motor Carrier Act of 1980 has not been administered as the Congress intended—and I said there seems to be a consensus developing. By that, I do not mean to suggest that I am in any way prejudging the outcome of these hearings. What I am saying is that we may well have reached a point, 3 years after enactment of the 1980 act, where there ought to be some hard answers.

It ought to be possible to sort out the effects of the recession on the industry and the effects of this act and its administration on the industry. But these hearings demonstrate to the same extent that our earlier oversight hearings suggested, that the administration of the act is at fault.

It seems to me that we have two courses open to us. We can explore whether the Interstate Commerce Commission is prepared to pay greater attention to the direction provided by the Congress in the 1980 act, or we can consider amendments to the act. I do not think anyone wants to do that. I think there is still plenty of support for the act itself. The complaints have centered mainly around its administration, so fundamentally, I guess it is up to the Interstate Commerce Commission at this point to convince us one way or another that no action is necessary.

This hearing and a followup session with the Interstate Commerce Commission and others have an important influence in this connection. But again, I am not prejudging these hearings or rendering a verdict on the Interstate Commerce Commission. For that matter, I am prepared to entertain the notion that not enough time has passed to give the act a chance to work, to sort out its effect against the background of a full business cycle.

At the same time, if there are grounds for withholding judgment, then it is up to those who hold that view to make their case, because time is running out. The Congress is not about to tolerate the kinds of economic distress of this or any other industry that has been alleged, particularly if that distress can be traced to the failure of an agency of Government to heed the will of the Congress.

On a more personal point, Mr. Chairman, I am pleased that we have with us today on a panel Prof. Grant M. Davis of the University of Arkansas, who will be appearing as a witness. Professor Davis is a perceptive and persuasive commentator on this area of transportation under consideration, and at the proper time, I will seek recognition for the purpose of introducing him to the subcommittee.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Hammerschmidt.

Mr. Zigich, I have your prepared statement and also a prepared statement of Dr. Silberman, and both of these, in their entireties will be made a matter of the record at this point.

[Statements referred to follow:]

SUMMARY STATEMENT OF AMERICAN TRUCKING ASSOCIATIONS, INC.

STATEMENT OF GEORGE ZIGICH

Good morning to you Mr. Chairman, and to the members of the Committee. I am George Zigich, Vice President of Traffic of AAA Trucking Corporation, Trenton, New Jersey. I appear here today, in the 3rd year of Oversight Hearings on the Motor Carrier Act of 1980, on behalf of the American Trucking Associations, Inc. (ATA). I have previously delivered to your Committee, for the record, copies of my more detailed prepared written testimony.

Although ATA, in principle, has fundamentally supported the provisions of the Motor Carrier Act, it has become clear that during the more than 3 years since the Act became effective, that the ICC has continuously, blatantly defied Congressional intent and purpose in its administration and implementation of the provisions of the Motor Carrier Act relative to the areas of entry, rates and rate bureaus. My prepared statement, inlcuding its attached Appendices "A" and "B", along with ATA's previous testimony, fully document this accusation in great detail.

I am also submitting herein an Exhibit which states the official policy of the ATA, which was adopted by its Executive Committee on June 15, 1983.

A. Entry.—With respect to entry, the ICC has consciously allowed capacity in the motor carrier industry to expand well beyond the amount necessary to provide competitive and adequate service and to meet the needs of the national defense. Operating under the mistaken assumption that all applications for operating authority should be granted, simply because a grant means more competition, the ICC has repeatedly refused to apply the entry standards contained in the 1980 Act properly.

The enormous increase in the number of new carriers, and the explosion in the scope of operations of existing carriers, has caused a substantial diversion of freight, primarily the truckload quantities, from those carriers that have normally been considered the backbone of this nation's transportation system, to carriers that are truckload specialists. As a result, the round trip operating expenses associated with the service provided on less-than-truckload shipments, and the remaining truckload shipments, are spread over a smaller base, thereby producing an overall increase in service unit costs. The cost increases must, in turn, be passed on to the shipping public. The net result is that, to the extent Congress envisioned any contemplated savings under the 1980 Act, such savings have not occurred. To the contrary, the ICC method of implementation has proven to be counter-productive, by fostering inefficient and wasteful transportation practices. The economic recession has only made things worse.

B. Rates.—With regard to rates, the rate area has gained much notoriety through the thousands of pages of tariff publications containing rate discounts. The basic problem with virtually all discounts is that, because of the failure of the ICC to review and regulate the nature and extent of such discounts, there is no rationale costs basis to justify either the kind of discount established or the size of the discount. Several examples of the ICC's refusal to enforce the statutory provisions relative to reasonable rates and destructive competitive rates are shown in my prepared statement.

Since most discounts are targeted for a specific large shipper, most of the smaller shippers of like kinds of traffic, moving from and to the same points, do not benefit from any discount, and therefore must pay the higher or normal level of rates, thereby subsidizing the shippers that are favored with discounts.

Recently, the ICC in its "Report" in Ex Parte No. 166, reaffirmed its announced policy that it will not entertain protests against rates that are unlawful, but instead will require aggrieved parties to file a formal complaint, a procedure which is much more expensive, and much more difficult to sustain because, by statute, the burden of proof is upon the complainant, rather than upon the respondent, as it would otherwise be in an investigation and suspension proceeding.

My prepared statement also shows several examples of where the ICC has attempted to inject arbitrary and capricious methods into the rational basis presently employed by the carriers in the collective consideration of classifciation ratings. Moreover, the ICC in Ex Parte No. MC-172 is attempting to abolish collective ratemaking for the rate bureaus contrary to clear statutory language and Congressional intent to the contrary.

C. Summary.—To summarize, the Motor Carrier Act of 1980 admittedly created a somewhat different environment for motor carriers of property. However, it is apparent from the facts contained in my prepared statement that the kind of environment contemplated by the Congress, and that fostered by the ICC, are worlds apart. The ICC has simply chosen to substitute its will for the will of Congress, to defy Congressional intent and purpose, and to ignore the mandates of the United States Courts of Appeals.

Failure of the ICC to administer the 1980 Act properly has produced results for the carriers and the shipping public that are contrary to the provisions of the National Transportation Policy. The empirical data presented by Dr. Silberman clearly demonstrates this to be the case.

D. Prayer.—As a consequence, we strongly urge your Committee to admonish the ICC immediately to enforce the statutory standards for entry and rates fairly and fully, and direct the ICC not to attempt any further deregulatory actions contrary to the provisions of the 1980 Act relative to tariff filings or rate bureaus. Specifically, because of the serious departures from proper agency conduct blatantly exhibited by the ICC, we respectfully request that this Committee promptly commence an investigation into the ICC's administration of the MCA, either through the Committee's own investigative staff, or if necessary, by appointment of a special council to conduct such investigation.

EXHIBIT A.—POSITION OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ADOPTED JUNE 15, 1983

It is the consensus of the American Trucking Associations, Inc. that the Interstate Commerce Commission should be required to fully and properly implement and administer the Motor Carrier Act of 1980. This will require that Congress be more receptive and responsive to the factual conditions presented at the oversight hearings during the last two years. It requires that the President nominate and Congress confirm, as Commissioners, persons who understand the motor carrier industry, and who, consistent with the spirit and intent of the provisions in the Motor Carrier Act of 1980, implement the clear intent of Congress. Neither the language in the 1980 Act, nor its legislative history indicates that Congress intended for the Commission to disavow its duty as an arm of Congress and administratively deregulate the industry.

Over the years, collective ratemaking has proven to be the most effective and economic means for effectuating the National Transportation Policy. It has provided the type of motor carrier service that the public needs and at rates that are reasonable and nondiscriminatory. The record before the Motor Carrier Ratemaking Study Commission establishes that over eighty percent of the persons submitting views are supportive of collective ratemaking. Furthermore, the record clearly demonstrated that the continuation of a national transportation system is dependent upon the cooperation and interconnection among carriers, which is only possible if Congress continues to afford antitrust immunity to the collective process.

We reaffirm our belief that the nationwide system of regular route motor common carrier service is working in the best interests of the national economy and the shipping public, and that this system of service provides the only feasible and sensible means for fulfilling the National Transportation Policy. Therefore, it is necessary to take whatever steps are required to:

(1) Protect and preserve the collective ratemaking provisions that are authorized by the 1980 Act; (2) Repeal the prohibition against the collective ratemaking of new released-value rates and single-line rates; (3) Support legislation to eliminate the single-line and released-value rate limitations that are scheduled to be imposed in 1984; (4) Oppose any legislative proposal to further deregulate the industry; and (5) Protect and preserve antitrust immunity for intrastate collective ratemaking.

STATEMENT OF AMERICAN TRUCKING ASSOCIATIONS, INC. ON OVERSIGHT - MOTOR CARRIER ACT OF 1980

I. QUALIFICATIONS

My name is George Zigich. I am the Vice President of Traffic of AAA Trucking Corporation, 3630 Quaker Bridge Road, Trenton, New Jersey 08619. I appear here today on behalf of the American Trucking Associations, Inc. (ATA). My employer is a motor common carrier of property operating over regular and irregular routes, providing the full range of motor common carrier services, handling all size shipments from minimum charge shipments to multiple truckloads on the widest range of general commodities. My company generally operates between points in the northeastern part of the United States covering 10,000 points from eastern Pennsylvania and the Washington, DC metropolitan area to points on the eastern seaboard from Maryland north to New Hampshire. Our company belongs to several Motor Common Carrier Rate Bureaus. I serve on the Middle Atlantic Conference General Rate Committee and its Board of Directors, the New England Motor Rate Bureau Board of Directors, the National Classification Committee, the Regular Route Common Carrier Conference Board of Governors and a whole host of allied sub-committees. I have been involved in motor carrier ratemaking in a managerial capacity for some 22 years and have been involved with motor carriers for over

30 years. I am a member of the Board of Directors and Corporate Secretary of my company.

II. BACKGROUND

Pursuant to section 3(b) of the Motor Carrier Act of 1980 (MCA) (Public Law 96-296) your committee is charged with the responsibility of conducting oversight hearings on the effect of the Motor Carrier Act of 1980, on an annual basis for 5 years to ensure that the MCA is being implemented according to Congressional intent and purpose. The American Trucking Associations, Inc. appeared before your committee in both 1981 and 1982, as well as the Surface Transportation Subcommittee on Public Works in the U.S. House of Representatives in each of those years, to advise the Congress of the methods being used by the Interstate Commerce Commission (ICC) to implement the MCA. We believe the facts presented in our prior testimony, in 1981, in 1982 and as presented herein, clearly demonstrate that the ICC has not implemented the MCA according to Congressional intent and purpose.

Rather than rehash matters which have been placed in the record before your Committee in prior years, in this statement I shall attempt to provide you with an update showing how the ICC has continued to blatantly defy Congressional intent and purpose in implementating the MCA. I shall also include in this statement several new transgressions of Congressional intent and purpose, committed by the ICC since ATA last had the opportunity to testify before your Committee. Most of these events are chronicled in Appendix "B" attached hereto.

Section 3(a) of the Motor Carrier Act of 1980, wherein the Congress stated its findings, provides that the Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to Congressional policy; and that the Commission should not attempt to go beyond the powers vested in it by the MCA and other legislation enacted by Congress. The Congressional findings further stated that legislative and resulting changes should be implemented with the least amount of disruption to the transportation system consistent with the scope of the reforms enacted.

It should be evident from the testimony previously provided this Committee by the ATA, the testimony contained in this statement, as well as the testimony of several other interested parties, that the manner of the implementation of the MCA used by the ICC has in fact resulted in substantial disruption to the transportation system, and has gone well beyond the powers vested in the Commission by the MCA.

III. OPEN DEFIANCE OF CONGRESSIONAL INTENT AND PURPOSE AS TO COLLECTIVE RATEMAKING

In our previous statements to this Committee during Oversight Hearings we have documented the ICC's various actions including its efforts to harass the rate bureaus by issuing regulations that have the effect of placing permissible collective ratemaking activities in a straight jacket. The ICC's latest venture in this regard is obviously designed to totally eliminate collective ratemaking notwithstanding the statutory provisions and the expressed intent of the Congress.

In Ex Parte No. 172, Withdrawal of Antitrust Immunity For Collective Ratemaking On Small Shipments (served October 6, 1983) the ICC is a notice of proposed rulemaking in which it proposes to adopt regulations by January 15, 1983 that would withdraw from the member carriers of rate bureaus the antitrust immunity granted by statute. The title of the proceeding is misleading for two reasons. First, for some unknown reason the ICC has purportedly separated the consideration of withdrawal of the antitrust immunity as between shipments weighing less than 1,000 pounds, on the one hand, and, on the other, all other shipments. It is obvious that any ICC decision to withdraw the immunity from the small shipmments would soon be extended to apply to all shipments. Secondly, since shipments weighing less than 1,000 pounds constitute nearly 90 percent of all shipments for the motor common carriers of general commodities, the abolition of collective ratemaking on this segment of traffic is tantamount to abolition of collective ratemaking on all shipments.

It is indeed incredible that the ICC should have ever even considered the institution of a proceeding such as Ex Parte No. 172. The idea ostensibly had its genesis in a petition seeking elimination of collective ratemaking on small shipments filed by two shipper associations. The basic reason offered by those shipper associations in their petition for the relief requested therein is the allegation (unsupported) that the ICC has failed to properly monitor rate increases on small shipments. Thus, the gravamen of the shippers' complaint is against the lack of enforcement by the ICC and not against the collective ratemaking process. Assuming, arguendo, that the shippers' allegation is true, the proper remedy would be appropriate use by the ICC of its statutory power to suspend and investigate rates.

Moreover, the institution of this proceeding by the ICC is even more incredulous when one considers the statutory language and the legislative history of Section 14 (49 U.S.C. §10706(b)) of the Motor Carrier Act of 1980 -- Public Law 96-296 (MCA). In section 3 of the MCA, Congress admonished the ICC not to go beyond the powers vested in it by statute, and that the MCA did not contemplate the elimination of rate bureaus (H.R. No. 96-1069, 6/3/80, p.28, S.R. No. 96-641, 3/24/80, p.14).

In light of the foregoing, we respectfully request that this Committee advise the ICC that the Ex Parte No. 172 proceeding should be promptly terminated as being clearly beyond the provisions of law and Congressional intent and purpose.

Also, in Ex Parte No. 172, the ICC has placed great reliance on the findings of the majority members of the 10-member Motor Carrier Ratemaking Study Commission (MCRSC). That report is a report to the President and the Congress. We respectfully hereby request that this Committee admonish the ICC that it is not privileged to rely on any of the findings in that report. The Congress itself will determine which views, if any, in the report -- the majority's or minority's -- are ever to be implemented by appropriate legislation.

IV. THE ICC CONTINUES TO KEEP THE COLLECTIVE ACTIONS OF THE NATIONAL CLASSIFICATION COMMITTEE UNDER ATTACK

It has previously been reported to this Committee that the ICC has attempted to hamstring the National Classification Committee (NCC) and the National Motor Freight Traffic Association (NMFTA) in the collective consideration and establishment of the statutorily required classifications of property. Since the last oversight hearing before this Committee the ICC has issued a decision in I & S M-29788, Charge For Order Notify Shipments which essentially holds that the NCC may not lawfully collectively consider and establish any provisions relating to charges, notwithstanding the fact that the plain language of the approved agreement is to the contrary and that the publication of charges was clearly contemplated in the originally approved collective ratemaking agreement. Judicial review was sought and obtained. (C.A. No. 79-2561 - NCC and NMFTA v. USA and ICC, U.S.C.A., D.C.C.). The Court not only remanded pertinent portions of the case to the ICC, but after several dilatory procedural moves by the ICC, the Court, on December 23, 1982, in a strongly worded opinion, directed the ICC to issue a decision on remand within 90 days. The subsequent decision of the Commission is presently undergoing further judicial review (C.A. No. 83-1474, NCC and NMFTA v. USA and ICC, U.S.C.A., D.C.C.).

In connection with Ex Parte No. MC-98 (Sub No. 1) the proceeding in which the ICC has attempted to severely revise classification procedures, on March 9, 1983 the ICC served a decision which represents a substantial retreat from the disastrous findings in its interim decisions. However, the NCC is still seeking reconsideration of several other unsound and onerous requirements.

Again the NCC was forced to go to Court in C.A. No. 81-1600 in order to get a remand to the ICC for its improper injection of new arbitrary and capricious standards into the method of determining lawful classification ratings on home heating furnaces in straight or mixed shipments (I & S Docket No. M-30240, Classification Ratings On Furnaces).

Additional evidence of the ICC's efforts to harass the collective classification of commodities may be found in connection with I & S Docket No. M-30292, Classification Ratings on Sprayers (C.A. No. 82-1595, NCC and NMFTA v. USA and ICC, U.S.C.A., D.C.C.), and I & S Docket No. M-30294 and M-30294 (Sub No. 1), Classification Ratings on Cans and Containers (C.A. No. 82-2265, NCC and NMFTA v. USA and ICC, U.S.C.A., D.C.C.).

Most noteworthy, however, is I & S Docket No. 30360, Reclassification of Pork Skins and Bacon Rinds (C.A. No. 83-1866, NCC and NMFTA v. USA and ICC, U.S.C.A., D.C.C. - Pending). There, the ICC has challenged the procedures followed by the NCC in conducting its business under its approved collective ratemaking agreement. Again, the NCC must go to court in order to justify its procedures which it believes to be in full compliance with the provisions of the MCA.

A good example of the ICC's refusal to exercise its statutory responsibilities is found in Docket No. 37476, Intercity Transportation Co., Petition For Declaratory Order - Classification of Battery Pack Cabinets (C.A. No. 81-1637, Intercity

Transportation Co. et al. v. USA and ICC, U.S.C.A., D.C.C.). In that proceeding the ICC refused to exercise its primary jurisdiction and determine the legally applicable rating on a commodity, holding that such questions should be resolved by negotiation between the shipper and the carrier, Elkins Act provisions notwithstanding.

V. THE ICC ESSENTIALLY APPROVES UNLAWFUL AND DESTRUCTIVELY COMPETITIVE RATES

The MCA made no changes at all with respect to the statutory requirements that rates be reasonable, non-discriminatory, non-preferential, non-prejudicial and not competitively destructive. The ICC, however, has seized upon a single provision in the National Transportation Policy (49 USC 10101(a)) (NTP), viz., the promotion of competition, as a basis for totally ignoring the above-identified requirements of the MCA.

It has previously been reported to this Committee on Oversight that the ICC has entertained the wholesale filing of tariff matter containing discounts. The size of the discounts -- as high as 50 percent -- are of no matter to the ICC. The Commission steadfastly refuses to exercise its statutory duty and power to suspend and investigate discounts that produce revenue well below a carrier's variable costs. This fact is freely acknowledged by the ICC in a "report" issued in connection with a proceeding identified as Ex Parte No. 166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.

That proceeding was instituted by the ICC on October 29, 1982. The ICC's report, served September 13, 1983, and notwithstanding the prohibitive evidence of record, predictably recites the ICC's view, one which does not comport with the law. The ICC simply alludes to its earlier decision in Lawfulness of Volume Discount Rates-Motor Common Carriers, 365 I.C.C. 711 (1982) and Docket No. 38872, Petition For a Declaratory Order-ATA-Lawfulness of Discount Rates (10/1/82) wherein the ICC declined to enter into any investigation of the abundance of tariff discount provisions, i.e., the ICC is unwilling to discharge its statutory responsibility.

In the MC-166 report, the ICC simply dismisses all discount pricing as "greatly benefitting the shipping public" and "increasing carrier efficiency"! (p.ii). It is utterly incredible that such conclusions could be reached. The ICC does not want to see the forest, only the trees. On the one hand, the ICC acknowledges the fact of substantial rate increases on LTL shipments since the MCA; yet, on the other hand, the ICC states that discounts greatly benefit the public. Who benefits? We submit it is the relatively larger shippers. But the overall rate level must increase if the carriers' are to survive, because there being only a finite volume of available freight, discounts simply divert freight from one carrier to another and raise one carrier's costs overall and decrease another's. Thus, there is no gain in efficiency. There is no net cost benefit. However, rates must go up to cover the discounts.

Thus, based on its false premises, the ICC in its MC-166 report (a) believes that destructively competitive rates do not exist (p.10), (b) condones rate wars (p.13), and (c) reaffirms its position to withdraw from the public one of the statutorily available means of redress, viz., the right to seek and obtain suspension and investigation of a rate (p.10). Thus, the Commission has, by administrative fiat, shifted all such activities to the complaint remedy, one which is entirely unacceptable and prohibitively expensive for most of the general public to pursue.

VI. COMMISSION APPROVAL OF UNLAWFUL RATES IS COMMONPLACE

In order to demonstrate to this Committee on Oversight the reality of the ICC's failure to enforce the statutory standards that rates must be reasonable, etc., there next follows several examples of cases brought before the ICC where the ICC refused to suspend rates that were demonstrated to be *prima facie* unlawful.

We emphasize that these are but a few examples, and we respectfully request the right to supplement the record with other examples from a survey that has been undertaken but not yet completed. Suffice it to say here, there is substantial expense involved in preparing and participating in these rate proceedings before the ICC. Thus, the carriers, having witnessed the failure of the ICC to act, and the ICC's public pronouncements of its unwillingness to act, have stopped throwing good money after bad, i.e., they do not continue to file protests when the ICC continues to refuse to act.

VII. IT IS ABUNDANTLY CLEAR THAT THE ICC CONTINUES TO BRAZENLY DEFY CONGRESSIONAL INTENT AND PURPOSE

In its previous testimony before your Committee at Oversight Hearings in both 1981 and 1982, ATA went on record as fully supporting the MCA as written by the Congress. Our positon has not changed. We know that when Congress enacted the MCA, the views of many diverse interests were thoroughly considered. As a result, the provisions that become law represented a well-balanced compromise that accommodated the legitimate interests of all parties, while continuing to protect the public good.

We come here today still basically supporting the MCA. Our fundamental position has not changed. We support the kind of regulation envisioned by the Congress when it passed MCA. Congressional intent and purpose, as evidenced by its legislative history, can be achieved only if the regulators act responsibly in the performance of their sworn duty to faithfully administer the Act. Without such a commitment, the provisions of the MCA are rendered meaningless because of the manner of application or lack thereof.

Unfortunately, there has been no meaningful enforcement of the MCA. The ICC has not acted in a manner that, in any way, could be characterized as being responsive to Congressional intent and purpose. Indeed, the facts are to the contrary. The present ICC Commissioners have elected to administer the Act according to their own personal philosophy rather than by the explicit terms of the statute in conjunction with its legislative history.

VIII. RELIEF REQUESTED

Our purpose here is twofold: first, to document the record before you with a clear showing of the lack of proper implementation of the MCA by the ICC; and second, to implore your Committee to take appropriate action by strongly admonishing the ICC (a) to immediately begin proper implementation of the MCA according to Congressional intent and purpose, (b) to specifically identify those acts and ommissions where the agency has gone beyond the bounds of Congressional intent and purpose, and (c) to require the ICC to report to the Congress with some degree of regularity, the nature and extent of the specific corrective action.

A. Special Investigation Requested

Finally, we respectfully request that this Committee promptly begin its own investigation into the administration of the MCA by the ICC. We urge this action because it is clear that any response by the ICC to Congressional inquiry will not be truly responsive to the questions asked, but rather will be couched in meaningless broad based terms and statistics of little import. Witness the broad brush dismissal given by the Commission's Director of Governmental Affiars in a letter dated September 13, 1983, to the Honorable Charles E. Bennett, a member of the U.S. House of Representatives from the 3rd District of Florida, a copy of which is attached hereto as Appendix "A". The record made before this Committee by ATA and other interested parties clearly demonstrates the facts to be substantially different than as indicated in the foregoing letter. Consequently, if this

Committee on Oversight is to avoid such a broad brush response by the ICC to Congressional inquiry, and if it is to develop the facts to its own satisfaction, then it is imperative that the Committee, either through its own investigative staff, or if necessary, through the appointment of an outside counsel, begin to conduct a penetrating investigation into the administration by the ICC of the MCA. We so request.

IX. FAILURE TO PROPERLY REGULATE ENTRY

When Congress wrote easier entry standards into the MCA it did not intend that certificates of public convenience and necessity should be granted virtually automatically to all applicants, and on only the broadest terms. If the Congress had so intended, it simply would either have eliminated from the MCA entry standards in their entirety or reduced the showing necessary to obtain a certificate to a "fitness only" standard. That is not what Congress did in the MCA, but that is what the ICC has done in its implementation of the MCA. The results have been, not just more competition, but wasteful excess capacity, accented by the deep recession.

Failure of the ICC to properly implement the revised entry standards of the MCA has resulted in an enormous increase in the number of authorized motor carriers. The ICC's Office of Transportation Analysis reports that there were 25,342 authorized carriers as of June 1, 1983, a 43 percent increase since the enactment of the MCA. Of almost 4,800 authorities granted during the last 12 months, 600 were nationwide applications involving over 100 new firms. There are now 870 nationwide carriers. Over

900 companies are performing compensated intercorporate hauling among some 10,000 wholly owned subsidiaries. More than 500 owner-operators were granted general commodity backhaul authority. The ICC Office of Transportation Analysis also reported that the number of carriers filing for bankruptcy were at an all time high.[1/]

All this goes to show that in less than three years the ICC has consciously permitted almost 10,000 new entrants to enter the market to compete for a finite volume of available freight that was decreasing in amount at an alarming rate, due to the recession. Such a rate of grant during a severe recession can only amount to irresponsible implementation of Congressional intent and purpose, and utter disregard for the provisions of the dictates of the National Transportation Policy to encourage sound economic conditions among the carriers and to promote efficient transportation service through the most productive use of equipment and energy resources.

The thousands of new entrants have focused upon that segment of traffic which is the most susceptible to diversion, viz., shipments of desirable higher rated commodities in truckload quantities. Their choice is obvious, as capital outlay requirements, for providing service to shippers of truckload quantities, are relatively small, i.e., only the cost of a tractor and a trailer are involved. On the other hand, in order to provide service to shippers of commodities moving in less-than-truckload

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[1/] Traffic World, September 12, 1983, p. 18.

(LTL) quantities, a substiantial amount of capital investment and working capital is required in order to acquire, operate and maintain (a) fixed plant terminal facilities, (b) large fleets of city pickup and delivery equipment, (c) sophisticated materials handling devices, (d) elaborate computer, communications and rating and billing machinery, and (e) adequate operating, supervisory and administrative personnel all necessary to render a full common carrier service.

Had the ICC been committed to administering the MCA according to Congressional intent and purpose, it would not have permitted wholesale grants of authority during a severe recession.

Anyone experienced in the operations of a motor carrier will freely acknowledge that, fundamentally, a carrier's headhaul or outbound loads generally consist of a trailer containing many LTL shipments. Where possible, such shipments are "top loaded" on a TL shipment of a high density commodity. The kind of freight obtained by the carrier to fill the trailer on the return inbound trip, or backhaul, is generally shipments in TL quantities. Reduced commodity rates were often established to attract backhaul shipments in TL quantities, and at the same time, to provide a revenue contribution overhead. The operational objective is to achieve balanced round trip loads of revenue producing freight in both directions.

The end result of the ICC's irresponsible method of implementation of the MCA's entry provisions is that TL shipments are no longer available in sufficient quantities, either as bottom freight on outbound loads, or to fill the backhaul needs of those carriers that provide the service on the LTL shipments, i.e., the headhaul traffic. This means that the carriers that provide the backbone of our transportation system, and national defense capabilities, i.e., the general commodity LTL carriers, are faced with much greter problems of imbalance and substantially lower average round trip load factors. The net result is less efficiency and higher costs for the carriers over all, which must ultimately be absorbed by shippers in the form of higher LTL rates.

There is no doubt the carriers have been rendered less efficient by virtue of the manner in which the ICC has chosen to implement the provisions of the MCA, and not because of the MCA itself. The substantial diversion of shipments in TL quantities from the full service carrier to the TL specialist has caused most of the remaining TL traffic to move under rates which are either only marginally profitable or, because of competitive factors, not profitable at all. Consequently, the carriers as a whole have experienced a substantial reduction in operating income, and in many cases, sustained operating losses. As stated earlier the number of business failures among motor carriers is at an all time high. Few other industries, if any, have been as severely impacted financially as has the motor carrier industry.

The foregoing scenario is well-documented here today by the empirical data presented in the accompanying statement of Dr. Silberman. Those who work daily in the industry are very much aware of the increase in concentration, i.e., the significantly larger market share of available LTL being transported by the major carriers. Indeed, in the freight transportation business, the market is almost fractured between the ever growing body of carriers that specialize only in TL shipments and the remaining, dwindling number of full service carriers that transport primarily LTL shipments. Except for the favored volume shippers the overall shipping public currently is paying higher rates than what would likely have been the prevailing rate levels if the ICC had not opened the flood gates in the granting of operating authorities thereby permitting the kinds of substantial imbalance of operations, the lowering of average roundtrip loads and the rise in unit costs and rates.

X. SUMMARY

There is no doubt that since the MCA there is a new environment for transportation by motor carriers of property. Part of the new environment stems from the statute itself and the intent of the Congress. However, the major changes have come from the method of implementation and application as chosen by the ICC.

In our prior statements submitted to this Committee, we have documented several scenarios that have taken place since the enactment of the MCA where the ICC, by substituting its will for the will of the Congress, acted or failed to act in a manner consistent with Congressional intent. Much of the actions, and inactions of which we lament, occurred during the first two years after the enactment of the MCA. Unfortunately, the ICC has continued such transgressions thereby producing a cumulative deleterious effect on the remaining motor common carriers of general commodities.

There follows in Appendix "B", an update of the ICC's deregulatory parade.

As shown earlier in this statement, in the area of operations, the ICC has failed to regulate entry in accordance with the standards contained in the MCA. The Commission continues to blatantly disregard the decision and mandate of the U.S. Court of Appeals with respect to the overgranting of authority requested. The virtual blitz of the enormous number of new or enlarged operating authority grants by the Commission amounts to nothing less than irresponsible agency action, especially during the time of a lengthy economic recession.

The ultimate losers, as a result of irresponsible agency action, are the public as a whole and particularly the motor common carriers of property. Unless the Congress acts to cause a substantial change in the course presently being followed by the ICC, in both the areas of operating rights and rates, there is little doubt as to the severe consequences that await this once great industry, the shipping public and the national defense. Virtually every ICC decision, notice of proposed rulemaking, policy statement or refusal to act, all done in the name of increasing competition and letting the marketplace control, has had the effect of producing inefficiency, diseconomies, an overall greater than necessary increase in total costs to the American people, and a substantial weakening of the financial underpinings of an industry that is vital (a) to the future real growth of our nation's economy and (b) to the ability to respond adequately to the needs of our national defense.

The accompanying statement of Irwin H. Silberman, Ph.D. clearly depicts the financial results for this industry. Dr. Silberman's statement speaks for itself. Suffice it to say here that it is apparent from a review of the financial data and Dr. Silberman's analysis that as a result of the Commission's manner of regulation during the past 4 1/2 years, a great economic waste has been visited upon both the industry and the public at large. Although the deregulators may try to point to the country's prolonged economic recession as the basic reason for the industry's financial plight, that alibi cannot stand in the light of Dr. Silberman's findings. The most that can be said for the recession is that it accented the problem by substantially reducing the finite volume of freight available for transportation service. Had the motor common carrier industry been subjected to responsible and even-handed regulation during the past 4 1/2 years, the financial waste that has evolved from many bankruptcies very likely could have been avoided or substantially reduced.

Unless your Committee acts in accordance with the relief here requested, the ICC will undoubtedly continue to produce, by administrative fiat, a totally deregulated motor carrier industry. However, if Congressional intent and purpose is ever to be achieved then it is imperative that your Committee promptly act in the manner here requested.

We thank you for the opportunity to present this statement.

The official position of ATA as adopted by resolution is attached hereto as Appendix "C".

APPENDIX "A"

Interstate Commerce Commission
Washington, D.C. 20423
SEP 1 3 1983

OFFICE OF TRANSPORTATION ANALYSIS

Honorable Charles E. Bennett
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Bennett:

Thank you for your July 19, 1983 communication directing our attention to the letter and enclosure from your constituent, Mr. S. E. Somers, Jr., Senior Vice President of Ryder/P.I.E. The enclosure, a letter to Honorable James J. Howard, Chairman of the House Committee on Public Works and Transportation was signed by executives of five major trucking organizations. The five are The American Trucking Associations, International Brotherhood of Teamsters. Motor Carriers Lawyers Association, National Motor Freight Traffic Association, and Owner-Operators Independent Drivers Association of America.

The motor carrier group sets forth charges that the Commission has allowed virtual free entry without regard to public demand or carrier fitness; has condoned illegal, discriminatory rates; has failed to adopt a comprehensive ratemaking policy; and has suspended the common carrier duty to serve. The group contends that the Commission has placed too much reliance on market forces to regulate and that the Commission's failure to administer the Motor Carrier Act properly is reflected in unemployment and the deteriorating condition of the trucking industry. They further state that the ICC has violated the law and thwarted the will of Congress.

The Commission has no concern that is greater than its responsibility to implement and administer legislation in accordance with its provisions, the National Transportation Policy, and the intent of Congress. The concerns expressed by the motor carrier group have been carefully reviewed -- in the context of both Commission and industry actions, and of the provisions of the Motor Carrier Act of 1980. Following that review, we must conclude that those who believe that we have incorrectly implemented the Motor Carrier Act are mistaken.

The Motor Carrier Act was designed to reduce regulatory control of the trucking industry and thereby to enhance competition. Two of the Act's major pro-competitive provisions were the easing of entry requirements and increasing price competition. Congress, in passing the Act, supported strong assertions by Congressional Committees regarding competition. The June 1980 report of the House Committee on Public Works and Transportation stated, "It is clearly the Committee's intent that the Commission must recognize the importance of competition and efficiency in motor carrier operations as the most desirable means for achieving national transportation goals and objectives. The Committee believes that competition and efficiency will normally be reinforcing concepts".

Regarding the approval of applications for operating authority, the Act states: ".... the Commission shall issue a certificate....unless the Commission finds, on the basis of evidence presented by persons objecting that....the certificate is inconsistent with the public convenience and necessity." The Commission carefully scrutinizes each application for authority. In FY 1982, approximately 11 percent of approvals to new carriers and 14 percent to existing carriers were restricted to only part of the authority requested.

The liberal entry requirements of the Act have goals to enhance competition and to provide the shipping public with adequate service at reasonable prices. Since July 1, 1980 more than 55,000 certificates have been issued to motor carriers of property, of which approximately 16,000 or 29 percent were to new carriers. During the third year under the Act, new carriers accounted for about 45 percent of all authority grants. This indicates that existing carriers were better prepared,upon implementation of the Act, to expand their authority. Approvals under the Act include more than 500 applications from owner-operators for general commodity operating authority. The number of total applications for operating authority declined from an average of more than 2200 per month during the first year under the Act to under 1100 per month during the third year which ended June 30, 1983.

Various discounting and innovative pricing actions since passage of the Act are in accord with the provision to: "...allow a variety of quality and price options to meet changing market demands and diverse requirements of the shipping public...". Independent rate actions reached record highs during 1982: 180,829 in FY 1982, compared to 115,085, 60,600 and 27,141 for calendar years 1981, 1980, and 1979 respectively. These independent actions typically represent discounts from rates devised by collective ratemaking.

In regard to the concern of the motor carrier executives that the Commission has been too liberal in allowing discounts, the Commission has been reluctant to place obstacles in the way of innovative and competitive ratemaking, a major objective of the Act. Still the Commission's powers in the areas of discriminatory and predatory pricing remain intact under the Act and these are major concerns. Further, staying abreast of pricing strategies is in keeping with the Commission's monitoring responsibilities and is essential to guidance of future decisions and development of information for annual Congressional oversight hearings.

Accordingly, the Commission in 1982 instituted a rulemaking, Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, with the purpose to investigate allegations of predatory and discriminatory pricing and examine pricing practices. A study of the evidence presented there resulted in the conclusions that there is no evidence of pricing discrimination or predation, and that pricing practices are fully in accord with objectives of the Act. These findings are consistent with those in a study of the trucking industry sponsored by the Federal Trade Commission and released March 4, 1982. The study concluded that "there is no good evidence to support assertions that competition is destructive, predatory, or leads to natural monopolies....".

The Commission is deeply concerned about the financial difficulties experienced by many motor carriers. It is unfortunate that implementation of the Motor Carrier Act was accompanied by a severe recession. Motor carrier industry excess capacity has recently been estimated by the American Trucking Associations to approximate 40 percent. Such excess capacity resulting from severe declines in tonnage would adversely affect the industry under any regulatory system. In a report dated June 11, 1982, Effects of Regulatory Reform on Unemployment in the Trucking Industry, the General Accounting Office concluded that poor economic conditions, not regulatory reform, have been the likely cause of high unemployment in the trucking industry in recent years, and that deregulation was only a minor influencing factor. The Commission concurs with the GAO conclusions.

Pressures on wages, unemployment, and excess capacity have plagued most segments of the economy during the recent recession. Particularly hard hit have been those directly related to production and inventory accumulation, including transportation. However, Business Week has reported for the 12-month period ending June 30, 1983, that the return on equity for publicly held trucking firms was 13 percent, compared to an all-industry composite return of 10.6 percent. The American

Trucking Associations reports of recent tonnage increases for Class I and II carriers of general freight provide optimism that the industry is beginning to benefit from improvements in the economy. In addition, the financial performance of numerous carriers, both existing and new, has already been favorable under the Act, as these carriers have taken advantage of new challenges, opportunities, and flexibilities which are permitted by the Act.

Concerning enforcement of the common carrier obligation, the study on service to small communities, mandated by Section 28 of the Motor Carrier Act, was completed in 1982. The study concludes that shippers in small and isolated communities have, on the whole, been helped rather than harmed by the Act and the feared dramatic changes in small community rates and service have not occurred. The study relates closely to an important segment of small shipment transportation, five hundred pounds being the shipment size most frequently mentioned during the study. In a March 16, 1983 decision in Ex Parte No. 77 (Sub-No. 3), Examination of Certificates as the Measure of Holding Out, the Commission gave further recognition to rate and service competition that has proliferated under the Act. The decision reaffirmed a long-standing policy and provided that"....a common carrier is not in violation of its obligations if it declines to provide service within the scope of its operating authority because such service is economically or operationally impracticable in the circumstances at the time of the service request". In short, no changes in the common carrier obligation have been made and none are contemplated.

In spite of the concerns expressed by some carriers and others, many--including major shippers, shipper groups, the Departments of Transportation and Justice, and the Federal Trade Commission--believe that the additional competition resulting from the Motor Carrier Act has been beneficial. Indeed, these organizations have suggested that additional legislation should be passed to further increase motor carrier competition and management flexibility. The Chairman of the Commission has expressed his suppport for such legislation but the ultimate decision on this must be left to Congress.

I hope that this discussion and the information provided reassure you that the Commission has acted in accordance with Congressional mandates and will continue its effort to implement the Motor Carrier Act in accordance with Congressional intent and the National Transportation Policy. Please do not hesitate to contact me if you have additional questions or concerns.

Sincerely yours,

Bruce N. Hatton
Director, Governmental Affairs

APPENDIX B

A. THREE YEARS AFTER MCA LEAVES NO DOUBT AS TO ICC OBJECTIVES

What motivates the Commissioners responsible for ICC policy is not a commitment to foster the public interest, effectuate the National Transportation Policy, or preserve a healthy national motor carrier transportation system. Instead, their implementation of the Motor Carrier Act of 1980 has been their method for pursuing reductions in its own workload. The ICC has become obsessed with developing deregulatory programs that cut agency paperwork and reduce agency administration to a rubber-stamping process. The fabricated statutory bases for its actions has entangled the ICC in extensive litigation to the detriment of the motor carrier industry and the public the ICC is supposed to be serving.

The ICC has discovered reductions in its functions can be best accomplished by interpreting the MCA as Congress's signal to totally deregulate the trucking industry. The ICC's favorite ploy is to isolate a specific provision in the 1980 Act that liberalizes regulation for a segment of the transportation industry, such as contract carriers, private carriers, or owner-operators, and then claim this narrow provision evidences congressional intent that the ICC expand upon Congress's regulatory reform, eliminating other administrative requirements governing this segment of the industry. Procedural short cuts to carry out these deregulatory programs, undertaken in the name of reducing the regulatory burden on the ICC and the industry, ignore due process protections and precipitate final results without considering the views of those adversely affected. The will of Congress, which the ICC ignores or twists, is thwarted rather than carried out.

The motor carrier industry is, for the most part, made up of thousands of small truck lines. These carriers, stretched thin financially, are suffering the triple blow of prolonged economic recession, oversaturation of new competitors, and cut-throat, below-cost ratemaking, victims of the ICC's refusal to administer and enforce the entry and rate provisions of the 1980 Act. These carriers as individuals cannot find, much less afford to challenge each unjust, irrational decision of the ICC in court. Consequently, relatively few ICC decisions or inactions are ever tested in court. Those that are embroil petitioners in an uphill battle. They must overcome the legal presumption in which all reviewing courts indulge: an agency's decision is presumed just, reasonable, and supported by the evidence. Two strikes against petitioners become 2-1/2 strikes when the agency cites its expertise as the foundation for its challenged decision.

B. THE ROUTE OF JUDICAL REVIEW IS A LONG ROAD TO FOLLOW TO GET STATUTORY ENFORCEMENT

In many instances, however, hiding behind its cloak of transportation expertise has proven unavailing to the ICC, particularly when judicial review involves decisions initiating major policy aimed at reducing its regulatory workload, but undertaken in the name of the MCA. The courts, when led to scrutinize the ICC's attempts to abdicate its functions, have not been hesitant to strike down the ICC's self-serving, expansive reading of the 1980 Act proferred as justification for its actions.

The ICC's typical defense to law suits attacking the legal basis for its sweeping deregulatory measures has been to claim Congress, in passing the 1980 Motor Carrier Act, intended to enhance competition and, therefore, by inference authorized the ICC to deregulate the motor carrier industry. There is not and never has been judicial acceptance of this novel "deregulation-by-inference" theory. It was first rejected by the courts in American Trucking Ass'ns, Inc. v. ICC, 659 F.2d 452 (5th Cir. 1981). The holding of the ATA case, followed in numerous subsequent judicial decisions, has become the leading decision on limiting the discretion of the ICC under the 1980 Act.

In the ATA case, the ICC was forced to defend the first of its major decisions purporting to implement the MCA.[1/] The challenged agency decisions set iron-clad standards for issuing future operating rights and for removing restrictions from existing certificates in response to Congress's mandate in the MCA to process expeditiously requests of motor carrier applicants to eliminate "unreasonable or excessively narrow territorial limitations," to "reasonably broaden" the categories of property authorized," and to eliminate "any other unreasonable restriction

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[1/] Ex Parte No. 55 (Sub 43A), Acceptable Forms of Requests for Operating Authority, 45 Fed.Reg. 86798 (Dec. 31, 1980), 364 I.C.C. 432 (1980); and Ex Parte No. MC-142 (Sub No. 1), Removal of Restrictions From Authorities of Motor Carriers of Property, 45 Fed.Reg. 86747 (Dec. 31, 1980), _____ I.C.C. _____ (1980).

... wasteful of fuel, inefficient, or contrary to the public interest" from applicants' certificates.[2]

In Ex Parte No. MC-143 (Sub 1), the ICC had ignored the qualifying words "reasonable," "excessive," and "unreasonable" in the statute, announcing it would eliminate virtually every restriction and limitation from all certificates when applicants seek such relief. Motor carriers with general commodity authority to perform an ex-rail or ex-water service to or from TOFC rail ramps or port cities suddenly found themselves holding unlimited authority to transport every conceivable commodity (except explosives) to and from anywhere in the country, without regard to whether a train or ship participates in the movement.

In Ex Parte No. 55 (Sub 43A), the ICC had adopted a policy of refusing to impose virtually any restriction on future operating rights, regardless of how reasonable or whether the applicant requested its acceptance. It relied upon the liberal but qualified restriction-removal language of §10922(i) as the principal basis for this policy and for requiring all future applications for operating authority to be framed in terms of very broad designated classes of commodities.[3]

The ICC's two rulemaking decisions attacked in the ATA case imposed these arbitrary requirements without regard to whether the applicant seeking the restriction removal or the new or expanded operating rights establishes it is fit, willing, or able to handle the broad new commodity groupings or to serve the vast new territory for which it would be required to make application. Proof of fitness, the ICC concluded, would not be required and would not be examined if submitted.

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[2] 49 U.S.C. §10922(i)(1).

[3] 45 Fed.Reg. at 86807.

The Court in ATA refused to accept the ICC's argument that Congress gave the ICC such sweeping, unfettered powers. It held the ICC's regulatory reform powers are actually quite limited and well-defined, citing portions of the findings of Congress accompanying the 1980 Act and the statute itself:

> The Act purposely gives the Commission "explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to congressional policy." Furthermore, the statute admonishes the Commission that it "should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation enacted by Congress." Moreover, "resulting cnanges should be implemented with the least amount of disruption to the transportation system consistent with the scope of the reforms enacted."(Footnotes ommitted.)[4/]

The Court reversed the ICC's ruling that it would only consider the 29 designated categories of commodities when broadening existing certificates, finding it not reasonable and lacking in flexibility. The Court pointed out that Congress had retained the traditional statutory requirement that an applicant prove it is fit, willing, and able to provide the service sought before the ICC may award new or additional authority.[5/] It also cited with approval the dissent of Commissioner Clapp: "A

[4/] 659 F.2d at 458.

[5/] Id. at 464-65.

decision to allow carriers some discretion in commodity choices is not restrictive, it is common sense."[6]

The Court also held that the ICC did not have the power under the restriction-removal provision of the 1980 Act automatically and routinely to grant applications to remove restrictions against handling bulk commodities and household goods from existing certificates without proof of applicant's fitness, willingness, and ability to perform these specialized services.[7] Its holding rejected the ICC's principal argument that Congress intended the ICC to rely on the liberal restriction-removal provision in the MCA as the basis for prohibiting future applicants from applying for limited authority or for automatically granting these applicants only unrestricted, broad authority. Legal bases for the ICC's policy, the Court ruled, could not be found, as the ICC had claimed, in inferences, deductive reasoning, or perceived benefits derived from enhanced competition. The Court was influenced by the limited statutory language effecting regulatory change in the MCA, especially the conscious decision of Congress to retain "fit, willing, and able" as an entry standard:[8] "... The statutory test requires that the carrier demonstrate all three attributes as a prerequisite to issuance of the certificate."[9]

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[6] Ibid.

[7] Id. at 465-66.

[8] Id. at 469-70.

[9] Id. at 469.

The Court also rejected another favorite argument of the ICC: that its broad powers find congressional approval from the fact that totally unrestricted authority enhances competition and economic gain. The Court thus held:

> These objectives may be laudable. They would be served even better by the complete removal of all licensing requirements. Congress did not, however, see fit to deregulate motor carriage. Indeed, it explicitly forbade the Commission to go beyond the powers vested in it by statute and provided it in such detail both for the removal of restrictions on existing certificates and for the alteration of the public convenience showing necessary for the approval of new certificates that it would be anomalous to leave to inference a matter of such significance as the general broadening of new authority.[10/]

Thus, the road to justice through the process of judicial review is long and uncertain. The agency bent on the accomplishment of deregulation by administrative fiat has everything to gain and little to lose by continued violation of Congressional intent and purpose and procedural due process required by the Administrative Procedure Act.

C. EVEN AFTER BEING STERNLY ADMONISED THE ICC CONTINUES TO BLATANTLY DEFY THE COURT AND THE MCA

The ICC in its arrogance chose not to obey the mandate of the Court in the ATA case. After three months of enduring the ICC's blatant disregard for the Court's instructions -- the ICC continued to rush through dozens of unrestricted grants -- petitioners in ATA had to return to court for a writ of mandamus to compel the ICC to comply. The Court's sharply worded decision on

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10/ *Id*. at 470.

further review ordered the ICC to confine itself to issuing grants that conform to the Court's directive and to issue expeditiously new rules for handling applications for new authority.[11]

The ICC waited six more months before proposing new rules purporting to carry out the mandate of the ATA Court despite its clearly worded decisions.[12] These long-delayed revised rules, not yet made final, flout the Court's decisions in the ATA cases as well as other post-MCA court rulings. In them, the ICC proposes to continue to justify its liberal handling of applications for new and additional authority on the basis of the restriction-removal provision appearing in another section of the statute.[13] The ICC's utter disregard for the Court's holding in ATA, precluding the ICC from indulging in such inferences, is bottomed on selected passages of the legislative history, citing in support a segment of the Senate debate. It is, however, the House version of the bill that passed Congress; the Senate version was rejected. Moreover, the Court in ATA clearly warned the ICC it must resort to the words of the statute itself to discern congressional purpose and should not rely on the legislative debate of the MCA.[14]

The fitness criteria the ICC proposes to adopt in the reopened Ex Parte No. 55 (Sub 43A) proceeding again omit requiring evidence of an applicant's financial fitness or ability to perform as proposed in its application.[15] Failure to require financial evidence from applicants on the issue of fitness is directly contrary to the rulings of two federal courts.[16] The ICC declines to acknowledge let alone rationalize its departure from either conflicting case in its proposed rules revisions.

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[11] 669 F.2d 957 (5th Cir. 1982).

[12] 48 Fed.Reg. 36255 (August 10, 1983).

[13] 48 Fed.Reg. 36286, n.6.

[14] 659 F.2d at 459.

The ICC also proposes without explanation to refuse to accept from future applicants voluntary restrictions against hauling commodities in bulk. It also refuses, at the same time, to require proof of fitness to handle bulk commodities.[17] The courts repeatedly have told the ICC in ATA and other cases that it may not simply presume an applicant is fit to handle such specialized commodities.[18] This blissful disregard for judicial authority prompted Chairman Taylor to issue a strong dissent in the proposed rules condemning the majority:

15/ 48 Fed.Reg. 36286. The ICC first attempted to delete this requirement in the form of a regulation modification in Ex Parte No. 55 (Sub 43), 45 Fed.Reg. 86780, 86782-83, 86790 (December 31, 1980). This challenged proceeding remains pending before the Fifth Circuit in the case of American Transfer & Storage Co. v. United States, Case No. 81-4072.

16/ The two cases are C&H Transportation Co., Inc. v. ICC, 704 F.2d 850, 853-54 (5th Cir. 1983); and Curtis, Inc. v. ICC, 662 F.2d 680, 687 (10th Cir. 1981).

17/ 48 Fed.Reg. 36,286,n.7, 36,287,n.9, and 36,288,n.12.

18/ 659 F.2d at 465, 473; see also, RTC Transportation, Inc. v. ICC, 708 F.2d 617, 619-20 (11th Cir. 1983).

> The majority's rigid policy of not permitting bulk restrictions violates the statutory requirements mandating specific fitness tests.... Morevoer, the majority's decision to routinely grant bulk authority without regard to the facts of the proceeding is precisely what the Fifth Circuit condemned [the ATA cases]. Under the proposed rules, applicants will continue to request authority, not because they desire the authority, but because they are compelled to do so by the Commission. The Commission, in turn, will grant such authority regardless of whether the statutory requirements have been met.
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> However, it is clear from the decision that the majority does not intend to properly implement or fully comply with the court's directive in individual restriction removal proceedings.

The ICC proposes, in the reopened rulemaking proceedings, to continue its past policy of rejecting even reasonable restrictions and limitations on the authority applicants may request when offered in response to the opposition of existing motor carriers.[19] In effect, the ICC's intransigent position precludes carrier protestants from seeking to narrow a proposed authority by directing questions to the applicant's fitness and ability. That it also conflicts with the holding of the Court in RTC Transportation, supra,[20] apparently is of no concern to the ICC.

The "fit, willing, and able" criteria, ignored in the ICC's promulgation of proposed revised rules in Ex Parte No. 55 (Sub 43A) and Ex Parte No. MC-143 (Sub 1), receive little more than lip service in ICC decisions in individual application proceedings decided since the ATA case. The courts, when asked to review these decisions, have refused to allow the ICC to shirk its statutory duty: it may not, they hold, ignore the financial fitness of an applicant, [21] administer the statutory fitness tests more leniently simply because reducing unnecessary regulation is a stated purpose of the MCA,[22] or refuse to explain the basis for its fitness findings.[23]

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[19] 48 Fed.Reg. at 36287.

[20] 708 F.2d at 619-20.

Despite the ATA holding, the ICC continues to ignore the judicial directive that it may not draw on inferences from specific narrow statutory reform provisions to support broad deregulatory measures aimed at areas beyond those Congress specifically addressed in the MCA. In October 1981, the ICC granted a contract carrier application, but refused to allow Aero Mayflower Transit to protest because it had not handled the contracting shipper's freight and had not shown it had solicited its business. This approach marks the first time the ICC had required a household goods protestant to show more than general solicitation. The ICC thus narrowed its existing protest standard without explanation, advance notice, or opportunity to comment. The Court, upon petition for review, refused to accept the ICC's ATA-type argument that it could infer power to alter standards at any time, retroactively and without notice, from the mere fact Congress had included stringent protest criteria in the 1980 Act.[24]

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[21] See n.16, supra.

[22] Coastal Tank Lines, Inc. v. ICC, 690 F.2d 537 (6th Cir. 1982).

[23] Port Norris Express, Inc. v. ICC, 687 F.2d 803 (3rd Cir. 1983).

During the same month, the ICC issued a rule purporting to regulate compensation levels between authorized motor carriers and their owner-operators.[25] The ICC, challenged in court, again cited as a basis for its statutory power to issue these regulations inferences that may be drawn from the general concern Congress did express in the MCA and in subsequent hearings about the plight of owner-operators. The reviewing court reversed,[26] noting that while Congress was not hesitant to enact legislation to assist owner-operators and may have perceived certain evils, the statute itself reveals Congress did not choose to authorize the ICC to attack this problem. The reports of Congress and its committee hearing transcripts are meaningless.[27]

The Court in Central Forwarding rejected the ICC's alternative argument that its broad powers to regulate derive from the remedial nature of the MCA and its revised National Transportation Policy. According to the Court, section 3(a) of that Act and its legislative history must be read as limiting the powers of the ICC, while the National Transportation Policy "operates to constrain rather than grant rulemaking power."[28/]

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[24] Aero Mayflower Transit Co., Inc. v. ICC, 699 F.2d 938, 941 (7th Cir. 1983).

[25] Ex Parte No. 311 (Sub No. 4), Modification of the Motor Carrier Fuel Surcharge Program, 46 Fed. Reg. 50070 (October 8, 1981), 365 I.C.C. 311 (1981).

[26] Central Forwarding, Inc. v. ICC, 698 F.2d 1266 (5th Cir. 1983).

[27] Id. at 1273.

D. CONGRESSIONAL ADMONISHMENT TO THE ICC IS ESSENTIAL IF THE MCA IS EVER TO HAVE THE OPPORTUNITY TO FUNCTION AS CONGRESS INTENDED

Recent months have seen additional efforts of the ICC to promote the welfare of unregulated private carriers and owner-operators at the expense of the authorized common carrier industry. These latest benefits take the form of rulemaking proceedings deregulating the ICC's trip-leasing requirements. They too reverse long-standing precedent, codified in ICC regulations. The ICC, with the tacit approval of Congress, has for years prohibited carriers from trip-leasing (a lease of less than 30 days) its equipment and drivers to other carriers, except under very limited conditions. The ICC in November 1982 lifted that prohibition unconditionally for private carriers, allowing them complete freedom to lease their equipment to authorized carriers.[29/] A few weeks ago, it proposed to grant the same relief for all unregulated owner-operators.[30/]

While the common carriers most adversely affected have taken the ICC's private carrier trip-leasing decision to court,

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[28/] Id. at 1284-85.

[29/] Ex Parte No. MC-43 (Sub No. 12), Leasing Rule Modification, 47 Fed.Reg. 53859 (November 31, 1982), 132 M.C.C. 927 (1982).

[30/] Ex Parte No. MC-43 (Sub No. 15), Elimination of Thirty Day Leasing Requirement, 48 Fed.Reg. 39251 (August 31, 1983).

obtaining a stay pending completion of the review process,[31] something must be done immediately to get the ICC back on track. Justice delayed is justice denied. It must be reminded Congress did not direct the agency to deregulate the motor carrier industry. It did not direct the agency to operate exclusively on the principle of creating more competition for competition's sake. It did intend for the ICC to abdicate its regulatory functions.

The ICC simply refuses to recognize that Congress, in passing the MCA, purposely created a carefully constructed balance between easing entry on the one hand and retaining regulation on the other.[32] The courts, in numerous post-MCA decisions, have reversed the ICC's concerted efforts to plunge the trucking industry into total deregulation, recognizing that the unequivocal language of the statute directs the ICC to operate within the well-defined parameters Congress established in the MCA.

Thus, the courts have reversed ICC decisions that ignore the retained statutory fitness entry standard,[33] that adopt inflexible rules removing all existing certificate restrictions and accepting for the future only very broad, unrestricted requests for authority,[34] that extend exempt-carrier status to individuals and partnerships affiliated with shippers when Congress limited it to "corporations,"[35] that grant applications without findings regarding scope of the authority required, applicant's fitness, or National Transportation Policy goals,[36] and that certificate carriers based upon general rulemaking findings reached prior to the 1980 Act when that Act expressly prohibits issuing such certificates, not merely the findings.[37]

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[31] Osborne Truck Line, Inc., et al. v. United States, pending before the 11th Circuit in No. 82-8787. The Court's stay issued April 25, 1983. The public comment period on the ICC's proposed rules in Ex Parte No. MC-43 (Sub No. 15) does not expire until September 29, 1983.

[32] See, for example, the explanation of Congressman Harsha and the warning of Congressman Howard during the floor debate on H.R. 6418. 128 Cong.Rec. H5345 and H5351 (daily ed. June 19, 1980).

[33] Port Norris Express Co., Inc. v. ICC, 687 F.2d 803 (3rd Cir. 1982).

The ICC's statutory overreaching to justify its deregulation programs continues unabated despite the growing history of judicial criticism, warnings, and reversals. Three months ago, the ICC issued regulations exempting all contract carriers from the statutory requirements to file tariffs with the ICC.[38] The statute permits exemptions only for individual contract carriers and classes of such carriers and only then after the carriers demonstrate the exemption is in the public interest and consistent with the National Transportation Policy.[39] Granting this industry-wide blanket exemption effectively emasculates the entire statutory provision and ignores long-established ICC criteria for exemptions.

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[34] ATA case, supra, 659 F.2d 452.

[35] American Trucking Ass'n., Inc. v. ICC, 672 F.2d 850 (11th Cir. 1982).

[36] Containerfreight Corp. v. United States, 685 F.2d 329 (9th Cir. 1982).

[37] Aero Mayflower Transit Co., Inc. v. ICC, 686 F.2d 1 (D.C. Cir. 1982).

[38] Ex Parte No. MC-165, Exemption of Motor Contract Carriers From Tariff Filing Requirements, 48 Fed.Reg. 24388 (June 1, 1983).

On June 1, 1983 the ICC gave notice of a proposed policy statement[40] wherein it stated that it contemplates the issuance of permits to contract carriers on an industry-wide basis rather than on the basis of specifically named shippers. Interested parties filed comments on July 18, 1983. The Commission stated that it intended to issue a decision within 45 days after the date for filing comments. To date, no decision has been issued. The effect of the adoption of such a policy is to destroy, by administrative fact, the distinction between contract and common carriers with respect to broad industry categories such as automotive, steel, etc.

Procedural niceties have not bothered the ICC in its haste to deregulate the trucking industry and lessen its own regulatory role. To minimize judicial accountability as well as to avoid time-consuming work, the ICC has employed such devices as cloaking its new rules in broad policy statements,[41] ignoring the principal arguments of those challenging its rules or decisions and declining to articulate the bases for its conclusions,[42] merely listing the conflicting contentions of the parties without attempting to resolve the factual and legal issues raised,[43] departing from long-standing precedent without notice, explanation, or opportunity to comment,[44] and issuing decisions in individual cases that invoke new policy while rulemaking proceedings are pending in which the new policy is still under active consideration.[45]

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[39] 49 U.S.C. §§10702(b), 10761(b), and 10762(f).

[40] 49 Fed.Reg. 24397.

[41] See, for example, Ex Parte No. 55 (Sub No. 43A), supra, reversed in ATA v. ICC, supra, 659 F.2d 452; Ex Parte No. MC-122 (Sub 2), supra, pending judicial review before the 11th Circuit in No. 82-5247, Ryder Truck Lines v. United States.

The ICC's propensity to accomplish deregulation of the trucking industry by administrative fiat, relieving itself of one statutory duty after another, has not stopped with the ICC's refusal to confine its rulings to the explicit statutory mandate of Congress set out in the MCA. Even when rebuked by the courts, the ICC has on frequent occasions either ignored the mandate of the reviewing court[46/] or issued subsequent decisions as if judicial reversal had not occurred.[47/] In short, the ICC has showed nothing but utter disregard for both the statute and judicial review.

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[42] *See*, *for example*, *Trailways, Inc.* v. *ICC* 673 F.2d 514 (D.C. Cir. 1982), reversing the ICC's refusal to address the anticompetitive issues raised in a major bus extension case; *Ritter Transportation* v. *ICC*, 684 F.2d 86 (D.C. Cir. 1982), reversing the ICC for failure to make fitness findings or to discuss other relevant factors; *G.I. Trucking Company* v. *United States*, 708 F.2d 1423 (9th Cir. 1982).

[43] *See*, *for example*, *Central Transport, Inc.* v. *United States*, 694 F.2d 968 (4th Cir. 1982), and cases cited therein.

[44] *See*, *for example*, Ex Parte No. MC-165, *supra*, pending judicial review in the D.C. Circuit in No. 83-1581, *Central & Southern Motor Freight Tariff Ass'n* v. *United States*; *Wheaton Van Lines, Inc.* v. *ICC*, 671 F.2d 520 (D.C. Cir. 1982); *Aero Mayflower Transit* v. *ICC*, *supra*, 699 F.2d at 942.

[45] *See*, *American Trucking Ass'ns* v. *ICC*, 682 F.2d 487 (5th Cir. 1982), staying an *ad hoc* decision until completion of the ICC's pending rulemaking proceeding in Ex Parte No. 438, *Motor Carriers; Acquisition of Motor Carriers By Railroads*, proposed rules published at 48 Fed.Reg. 37539 (August 18, 1983); and Dockets No. 38749 (Sub No. 1), *et al.*, *UTF Carriers, Inc.--Petition For Exemption From Tariff Filing Requirements* (served July 5, 1983) and No. 38895, *et al.*, *International Transport, Inc.--Petition For Exemption From Tariff Filing Requirements* (served July 5, 1983), in which petitions for writs of mandamus and prohibition were denied by the D.C. Circuit Court in Case No. 83-1386 pending final decision of the ICC in Ex Parte No. MC-165, *Exemption of Motor Contract Carriers From Tariff Filing Requirements*.

Most recently, in a decision served August 17, 1983 the ICC in Ex Parte No. 438, Acquisition of Motor Carriers By Railroads,[48/] has announced a proposal to modify its policy governing applications by rail carriers to acquire motor carriers pursuant to the provisions of 49 U.S.C. 11343-47 by no longer requiring the long-standing doctrine of "special circumstances" be shown in order for the rail carrier to justify acquisition of a motor carrier whose operations extend beyond those which can be classified as auxiliary or supplemental to rail operations. The ICC cites as authority for its proposal the "new pro-competitive

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[46/] ATA v. ICC, supra, 659 F.2d 452, enforced by writ of mandamus, 669 F.2d 957, but ignored in proposed revisions to the invalidated rules in Ex Parte No. 55 (Sub 43A), 48 Fed.Reg. 36255, discussed supra at pp. 7 et seq.; Amador Stage Lines, Inc. v. United States, 685 F.2d 333 (9th Cir. 1982), necessitating further order from the Court directing the ICC to revoke the authority the Court previously ruled was unlawfully granted.

[47/] See, for example, the cases discussed supra at n.16 and n.20.

[48/] 48 Fed.Reg. 37539.

policies of the recently enacted" MCA and the Staggers Rail Act of 1980 (P.L. No. 96-448, 94 Stat. 1895).

The foregoing decision became effective on the date served. However, comments may be filed with the Commission by October 3, 1983. The effect of this decision is to invite wholesale take-over of motor carriers by railroads and to withdraw from the Congress the opportunity to decide whether or not the long-standing Congressional policy against acquisition of motor carriers by railroads should be liberalized.

E. DEREGULATION OF CREDIT

In 1980 and 1981 we reported concerning the Commission's deregulation efforts in such areas as the extension of credit by carriers to shippers, uniform rules governing detention and C.O.D. services.

The most important of these proposals is the one to eliminate uniform rules governing the extension of credit. The Commission first proposed this in the Spring of 1980. As we reported to you at that time, the elimination of these rules, especially at a time when the industry was beset by unprecedented financial problems, problems which have only gotten worse in the ensuing two years, would appear to be in contravention of the National Transportation Policy to foster an economically sound motor carrier industry. Their elimination would work a tremendous drain on carrier working capital. It would also encourage discrimination among shippers -- a fact which was substantiated by the public response to the ICC's most recent proposal to deregulate credit, i.e. strong support by the larger shippers who would be able to exercise their economic clout over carriers to obtain advantage over their competitiors in the receipt of credit from carriers. The Commission's proposal would also destroy bank payment plans, and have detrimental effect on carriers utilizing owner-operators who must comply with the 15-day pay rules of the Commission's leasing regulations. Further, the proposal would construct insurmountable financial barriers to the entry of minority and other small businessmen into the industry. Finally, it would handicap the industry's ability to re-equip itself so as to take advantage of the more efficient equipment authorized by the Surface Transportation Assistance Act of 1982.

The Commission's most recent proposal to eliminate uniform credit rules, issued in January, 1983, is an attempt to remedy some of the legal defects in the agency's 1980 proposal. Carriers would still be able to set their own credit terms in tariff form with a maximum of 30-calendar days and a minimum of 10 days; they would even be allowed to set individual credit terms for different "classes" of shippers The only difference from the prior proposal is that those carriers who chose not to issue their own credit terms would be governed by a 15-calendar day credit period, a change from the original proposal in form only, not substance. Competitive factors would force all carriers to adopt more liberal credit terms.

The Commission's proposal was opposed by the trucking industry, including the Minority Truckers Development Council, groups representing small shippers, public accounting firms serving the trucking industry, and the National Association of Freight Payment Banks, which includes most of the country's largest banks. All attacked the Commission's proposal on the same general grounds we have already discussed.

The Commission's most recent proposal does not remedy the legal problems inherent in the Commission's original proposal. The statute itself, 49 U.S.C. §10743, prohibits carriers subject to the Act from surrendering possession of property transported by them, before payment of charges, except under regulations of the Commission governing the payment for transportation and service and the prevention of discrimination. It is still the opinion of many of the responding parties that the Commission's revised proposal is still a non-regulation which would not satisfy the statutory requirement for a regulation of the ICC governing the payment for transportation services. The proposal, if adopted, would result in carriers having to operate on a "cash only" basis, an arrangement that is neither practical nor desirable in the modern practices of shippers and carriers.

In the other two mentioned areas, the Commission has issued a final order eliminating the uniform detention rules. The agency's proposal to eliminate the rules governing the handling of C.O.D.'s, which was also opposed by shippers and carriers alike, is still pending before the agency.

F. ADMINISTRATIVE EXEMPTION OF MOTOR CARRIER TOFC SERVICE

For the last two years we have discussed the Commission's exemption of motor carrier service performed as part of a trailer-on-flatcar (TOFC) movement. In Ex Parte No. 230 (Sub No. 5), Improvement of TOFC/COFC Regulation, the ICC exempted motor carrier service performed by a rail carrier in a truck owned and operated by the railroad. Still pending before the agency is its proposal in Ex Parte No. 230 (Sub No. 6) to extend this exemption to include motor carrier service performed by rail-affiliated motor carriers or other motor carriers acting as the agent of a rail carrier. Both of these proceedings appear to be attempts on the part of the Commission to evade the Motor Carrier Act of 1980's proscription on general findings of public convenience and necessity developed in a rulemaking proceeding by utilizing the agency's rail exemption authority as amended by the Staggers Rail Act of 1980, 49 U.S.C. §10505.

Unfortunately, the United States Court of Appeals for the Fifth Circuit found the first proceeding to be only a minor intrusion into the congressionally-mandated licensing scheme of the motor carrier industry and upheld the limited exemption. However, in spite of the Court's clear limitation on such exemptions, the Commission seems intent on proceeding with its proposed expansion.

G. ELIMINATION OF "SPECIAL CIRCUMSTANCES" DOCTRINE

For the last two years we have described to you the attempts by the ICC to eliminate, by administrative fiat, the special test applicable to the licensing of a motor carrier affiliate of a rail carrier. After citing several instances in which the Commission had licensed rail-affiliated motor carriers without any consideration of the "special circumstances" doctrine, requested that this Committee direct the ICC to continue to apply the test in order to carry out the National Transportation Policy's requirement for separation of the various transportation modes.

In January of this year, the ICC issued its "policy" statement eliminatng the congressionally-mandated requirement that rail or rail-affiliated applicants for unrestricted motor carrier operating authority must establish "special circumstances." Ex Parte No. 156, Applications For Motor Carrier Operating Authority by Railroads and Rail Affiliates, 132 M.C.C. 978 (1983). Although the Commission's "policy" statement is pending before the 5th Circuit (it will be argued September 26, 1983), the ICC has now proposed to eliminate, by administrative fiat, the statutory provision, 49 U.S.C. §11344(c), proscribing the acquisition of motor carriers by rail carriers absent a showing of "special circumstances." Ex Parte No. 438, Motor Carriers; Acquisition of Motor Carriers by Railroads, 48 Fed.Reg. 37539 (August 18, 1983). The Commission has made an assumption contrary to the statutory requirement, that all acquisitions of motor carriers by rail carriers are in the public interest. It has placed the burden on opposing parties to prove otherwise.

In conflict with the clear language of the statute, administrative and judicial precedent, as well as simple logic, the ICC has found that the best way to "preserve the inherent advantages of each mode" is to allow rail carriers to become motor carriers.

Continuation and enforcement of the "special circumstances" doctrine, with respect to both the granting of new authorities and the acquisition of independent motor carriers by rail carriers, has become of paramount importance due to the liberalized entry requirements of the 1980 Act and the continuing recession in the motor carrier industry. With an ICC which continues to ignore the legal restraints of the Interstate Commerce Act, the railroads have continued to take advantage of the situation in seeking to expand their motor carrier operations. As a result, the safeguards against domination of one mode of transportation by another have become all the more necessary.

H. EXAMPLES OF THE FAILURE OF THE ICC TO REGUATE RATES

As stated earlier, since passage of the Motor Carrier Act of 1980, the ICC has granted virtually all applications for motor carrier operating authority which has come before it. This open-handed approach has vastly increased the number of carriers seeking available traffic. Meanwhile, the on-going recession, which only recently has shown signs of loosening, has dramatically reduced the flow of goods. The inevitable result has been massive rate cutting by motor carriers and the use of short run pricing techniques designed solely to capture traffic without regard for whether the rates cover the carriers' costs or whether they are discriminatory. Below cost pricing has led to many failures among motor carriers, failures that have occurred about twice as often as among businesses generally.

In the MCA, Congress included competition and innovative ratemaking as desirable goals in the National Transportation Policy. But just as importantly, Congress insisted that rates be reasonable, fair, and free of predation. In the face of these

Congressional directives, one would imagine that the ICC would have actively monitored motor carrier rates to assure that the statutory standards were not violated. Unfortunately, the ICC has done nothing of the sort. Hiding behind its theory that the MCA precludes it from any interference with marketplace forces, the ICC has steadfastly refused to restrain rate cutting or to set any standards which would guide carriers as they set rates in this difficult economic climate.

The ICC's handling of the 1982 rate-reductions of a relatively large trucking firm headquartered in the midwest is illustrative of the agency's abdication of its regulator responsibilities.[49/] The respondent carrier sought a full 25 percent reduction on all minimum-charge, less-than-truckload (LTL), and other specified shipments, and the ICC granted its request on short notice. Two competing carriers, by filing formal protests, objected that the reductions were discriminatory -- because the discounts were available only to shippers within a 10-county area -- and predatory -- because the reduced rates would force the respondent carrier to operate at a loss, and because the discounts were instituted solely to capture the protesting competitors' customers.

Through an FOIA request, one of the protesting competitors learned that the employee Suspension Board of the ICC, which recommended allowing the reductions on short notice, was guided by the Commissioners' personal philosophy that any reductions in

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[49/] Suspension Board Case No. 70832.

the name of competition was justified. The Suspension Board acknowledged that in the first quarter of 1982, the respondent carrier's expenses were 14 percent higher than its revenue. Yet, no concern was expressed for the fact that the lower revenue produced by 25 percent discounts would inevitably lead to even greater losses.

The employee Board and the Commissioners themselves refused to consider the protesting competitors' argument that rates below a carrier's variable costs are presumed predatory and are destructive to stability and competition and inconsistent with the National Transportation Policy.

Thus, the respondent carrier was allowed to put into effect a sweeping 25 percent rate reduction, despite the fact that it had been losing money for years and despite the fact that the protesting carriers had made a prima facie showing that the reduced rates were discriminatory and predatory. Under fair and impartial regulation, in circumstances as shocking as these, the protesting carriers had a right to expect, as a minimum, that the destructively competitive 25 percent discounts would be placed under investigation, with the respondent being given every opportunity to justify such a substantial reduction by probative evidence, if at all prossible.

The ICC's action in this case is not an isolated example. As serious as the individual cases are, however, even more serious are those instances in which the ICC has been asked to set general guidlines for discounted rate reductions and has refused to do so. A few examples follow.

In November 1981, a group of motor carriers asked the ICC to set standards to govern freight rate discounts given for volume and aggregate tenders.[50] The ICC refused, claiming that the carriers misunderstood "the efficacy of existing standards that govern discount rates and the competitive reforms that the Motor Carrier Act [1980] imposes on traditional ratemaking policy."[51] The ICC was somehow able to conclude that any standards could "stifle legitimate competition and retard efficiency."[52] Furthermore, the ICC said it would no longer use its power to suspend or investigate rates to curb predation because "the suspension and investigation format is a premature process for addressing predation and that further standards aimed at that process would not be useful."[53]

Neither Chairman Taylor nor Commissioner Simmons could swallow this wholesale abdication. Both dissented. Chairman Taylor stated: "...I fail to see why an open proceeding with public participation would stifle lawful price competition." Vice Chairman Gilliam concurred, but argued that a policy statement would have been useful for declaring the ICC's position.

The ICC continued to turn its back on its obligations, when it again refused to respond to a request for guidance in the rate field.[54] In July, 1982, the American Trucking Associations asked the ICC "to define standards for determining the lawfulness of volume discount rates."[55] No guidance was forthcoming. Vice Chairman Gilliam -- by now a voice crying in the wilderness -- again implored the ICC to issue a definitive policy statement. His request was unheeded.

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[50] No. 38728 Lawfulness of Vol. Discount Rates -- Mot. Com. Car., 365 ICC 711 (1982).

[51] 365 ICC, at 712.

[52] Id.

[53] 365 ICC, at 715.

Then, in October, 1982, the ICC called for public comments on pricing practices of motor carriers of property since passage of the MCA.[56] The ICC announced that these public comments "should promote certainty, clear the air, and encourage rate innovation." Despite these laudatory aims, the format of the proceeding virtually assured that nothing contributable would come of it. Instead of a formal rulemaking proceeding leading to precise ratemaking standards, or even a formal policy statement, the ICC had merely called for comments. The comments were submitted by mid-January of this year, but nothing was heard from the ICC until September 13, 1983. One hundred eight entities -- motor carriers, trade associations, shippers, and federal agencies -- contributed comments on every aspect of current ratemaking. The comments made clear the uncertainties which carriers and shippers face today: which pricing techniques are legitimate competition and which violate the MCA? What, if any, oversight of pricing does the ICC intend? What is the ICC's interpretation of the sections of the 1980 Act which set standards in pricing? The ICC, in its "Report", has again refused to set standards.

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[54] No. 38872, Petition for Declaratory Order -- ATA -- Discount Rates.

[55] Petition of ATA, at 10.

[56] Ex parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.

Former Vice Chairman Gilliam was indeed correct when he described MC-166 as an "amorphous" proceeding which "only invites characterization as a 'make-work' effort designed to soothe emotions and demonstrate that the Commission is 'doing something' (although not much)." The then Vice Chairman noted that he had tried twice in 1982 to get the ICC to issue policy statements, but to no avail.

Thus, today carriers and shippers are still faced with a total lack of pricing standards. The ICC steadfastly refuses to act in utter disregard of the governing statutes which categorically stated that rates shall be reasonable, non-discriminatory, fair, not destructively competitive, and free of predation. In section 10101 of Title 49, Congress sets forth its transportation policy which declares that it shall be the goal of motor carrier regulation (and therefore, the ICC) "to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices."

Sections 10701 and 10708(d) of Title 49 reinforce the requirement that rates be reasonable. Section 10701 states plainly that a motor carrier rate for a service subject to the Commission's jurisdiction "must be reasonable." Section 10708(d) precludes a challenge to the reasonableness of a rate falling within the zone of rate freedom (ZORF) on the grounds that the rate is too high or too low, but otherwise leaves the requirement of reasonableness intact.

Section 10741 of Title 49 prohibits discrimination in pricing by forbidding the use of special rates, rebates, or other devices as a means of offering a service to one party that is not offered to another party on like traffic. Yet the ICC, in total disregard of this provision, has approved payment of a discount to a shipper (Consignor) when the freight charges are paid by the Consignee.[57/]

Section 10708(d) gives the ICC power "to suspend and investigate proposed rates on the basis that such rates constitute predatory practices..."However, the ICC has not entered into a significant formal investigation since the enactment of the MCA, some 3 years ago.

The encouragement of competition is but one of several factors to be considered in the NTP. ZORF was established as the unregulated means of achieving rate flexibility. But the long-standing concept, that rates must be reasonable, free of undue discrimination, and not predatory has not been changed. No pricing technique, even an innovative and competitive one, is sanctioned by the MCA if it violates these specific statutory criteria.

In the face of these explicit statutory criteria, it is incredible that the ICC has concluded it has no duty to enforce rate standards. The conclusion is obvious: Congress must somehow

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[57/]

effectively direct the ICC to enforce the regulatory standards Congress has laid down and upon which both the shippers and the carriers depend.[58/]

There is one other recent action of the ICC which concerns a substantial segment of the regulated motor carrier industry, i.e., Ex Parte No. 170, Short Notice Effectiveness For Independently Filed Motor Carrier and Freight Forwarder Rates. There the ICC proposes to reduce the statutorily required notice period for all independently announced tariff filings from 30 days to one day for reductions and five days for increases.[59/] This proposal, if adopted, would preclude an interested party from filing a protest which is due 12 days prior to the effective date.

In a deregulatory move[60/] instituted under the guise of simplification, the Commission is proposing to substantially amend its Tariff Circular,[61/] ICC regulations developed through years of practical experience, that have enabled shippers and

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[58/] Certain shipper associations also strongly argue that the ICC has abdicated its role of regulating general rate increases. To the contrary, all general increase proposals are supported by voluminous required evidential support. Internal staff documents of the ICC obtained under FOIA procedures reveal (a) the careful scrutiny to which each general increase proposal is put, and (b) the fact that all such general increase proposals filed since the enactment of the MCA fall well within the zone of reasonableness as measured by long-standing ICC standards.

[59/] Short notice publications are presently available under the statute where "cause exists".

[60/] Docket No. 37321, Revision of Tariff Circular-All Carriers, 48 Fed.Reg. ______.

[61/] 49 CFR 1370 et seq.

carriers alike to readily understand tariffs and ascertain the correct legally applicable rate. This proposal will in effect change tariff publication from a precise science to an amorphos mixture of vague generalities.

Possibly the single most important factor in the ratemaking turmoil that has been fostered by the ICC during the past 3 years has been the Commission's carte blanche granting of Special Tariff Authority applications authorizing the establishment of reduced rates and discount provisions to become effective on 14 days' notice or less. Moreover, the Commission's Special Permission Branch has freely authorized carriers to depart from a few very important and long-standing tariff circular rules. These two rules (a) required a carrier to publish all of its rates on the same commodity in a single tariff, and (b) prohibited one ratenaming tariff from referring to another ratenaming tariff in order to determine the rate. The free grant of departure from these 2 tariff rules as well as the permission to establish rates based on a percentage relationship to other rates has permitted carriers to establish untold numbers and kinds of individual discounts, and special deals for larger shippers and, as a practical matter, to hide such activity among the surge in the thousands of pages of individual tariffs that have been published and filed with the Commission since MCA.

The result of this laissez faire attitude of the ICC toward ratemaking is that today the rate structures are in a shambles. Duplicate and conflicting rates abound. The correct legally applicable rate is rapidly becoming impossible to locate.

Favored shippers are permitted to "write in" and select a rate. There is virtually no assurance and little likelihood that shippers of the same commodities being shipped from and to the same points under like conditions are paying the same rates for the same size shipment. Statutory discrimination and destructive competition wage rampant and the ICC does nothing. Indeed, the time has come for the Congress to move quickly, and strongly repremand the ICC before it is too late, i.e., before the country finds itself with only a handful of regular route motor common carriers of general commodities, and a shipping public and national defense reliant totally on the abilities and pricing decisions of such remaining carriers.

APPENDIX "C"

POSITION OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Adopted June 15, 1983

It is the consensus of the American Trucking Associations, Inc. that the Interstate Commerce Commission should be required to fully and properly implement and administer the Motor Carrier Act of 1980. This will require that Congress be more receptive and responsive to the factual conditions presented at the oversight hearings during the last two years. It requires that the President nominate and Congress confirm, as Commissioners, persons who understand the motor carrier industry, and who, consistent with the spirit and intent of the provisions in the Motor Carrier Act of 1980, implement the clear intent of Congress. Neither the language in the 1980 Act, nor its legislative history indicates that Congress intended for the Commission to disavow its duty as an arm of Congress and administratively deregulate the industry.

Over the years, collective ratemaking has proven to be the most effective and economic means for effectuating the National Transportation Policy. It has provided the type of motor carrier service that the public needs and at rates that are reasonable and nondiscriminatory. The record before the Motor Carrier Ratemaking Study Commission establishes that over eighty percent of the persons submitting views are supportive of collective ratemaking. Furthermore, the record clearly demonstrated that the continuation of a national transportation system is dependent upon the cooperation and interconnection among carriers, which is only possible if Congress continues to afford antitrust immunity to the collective process.

We reaffirm our belief that the nationwide system of regular route motor common carrier service is working in the best interests of the national economy and the shipping public, and that this system of service provides the only feasible and sensible means for fulfilling the National Transportation Policy. Therefore, it is necessary to take whatever steps are required to.

1. Protect and preserve the collective ratemaking provisions that are authorized by the 1980 Act;
2. Repeal the prohibition against the collective ratemaking of new released-value rates and single-line rates;
3. Support legislation to eliminate the single-line and released-value rate limitations that are scheduled to be imposed in 1984;
4. Oppose any legislative proposal to further deregulate the industry; and
5. Protect and preserve antitrust immunity for intrastate collective ratemaking.

STATEMENT OF IRWIN H. SILBERMAN, PH.D.

Mr. Chairman and members of the Subcommittee:

My name is Irwin H. Silberman and I am an economic and financial consultant in private practice in Potomac, Maryland. I have participated in numerous studies of trucking industry finances over the past fifteen years.

I very much appreciate the opportunity to appear before this Subcommittee, and to present the highlights of my analysis of the causes of the deterioration of the financial position of a major segment of the trucking industry, the motor common carriers of general commodities. In 1982, those general freight carriers accounted for $13.9 billion of operating revenues.

Comprehensive data on the general freight segment indicate that their 1982 financial results rivaled the results reported by the worst performers in the industrial sector in 1982. Thus, revenues were down 11 percent and operating earnings in 1982 were insufficient to cover interest expense by a margin of almost $32 million. Several findings are of special interest:

A. The year 1982 marked the fourth successive year of economic decline for the general freight carriers. The duration of the downturn far exceeded that experienced by other industries.

B. Since early 1979, carriers representing 16 percent of industry revenues have gone out of business; carriers accounting for an additional 28 percent of revenues are also candidates for failure.

C. An analysis of traffic data pinpoints the dramatic loss of significant volumes of truckload traffic, such traffic having previously contributed both to system balance and profitability. Data for 1983 indicate that the general freight motor common carriers are not sharing in the improved level of economic activity currently being experienced. Rather, TL volumes continue to decline, and LTL volumes have not improved meaningfully.

D. LTL traffic has not suffered a similar dramatic decline in volume in the 1979-1982 period, taking into account the severity of the recession. LTL yields have been increased (despite widespread discounting) to offset added costs associated with the inefficiencies resulting from loss of balance.

E. The market share of the ten largest motor carriers has risen sharply in recent years, and approached 50 percent in 1982. Though their earnings were poor, these ten carriers in 1982 earned a greater aggregate profit than did the entire general freight sector, implying a substantial loss for the 200+ remaining carriers.

F. Carrier investment in operating property declined by one-half billion dollars from the beginning of 1980 to the end of 1982. The age of the physical plant of the motor carriers has increased in each recent year.

G. In the first half of 1983, the four-year profit slide was arrested. The analysis shows that the meager profits achieved reflect increased revenue yields, and not increased traffic.

H. Taken together, analysis of the data leads to the conclusion that the deterioration of motor carrier financial position has resulted from an open-entry policy which has impaired the industry. Since entry has occurred primarily in the truckload area, the volume shippers of truckload freight have presumably enjoyed a lower rate of increase in rates.

As an offset, LTL revenue yields have increased sharply, so that the LTL shipper is paying much higher rates than before. Despite this fact, widespread discounting has eliminated profits for the general freight carriers. In effect, then, reduced regulation is seen to have benefited truckload shippers at the expense of both LTL shippers and the motor carriers.

I am in the process of conducting an in-depth study of the recent financial and traffic data, as well as of their interrelationships. Upon its completion, I hope that the results of that study will be submitted to assist this record.

I. RECENT MOTOR CARRIER PROFITABILITY AND INVESTMENT: A SURVEY

The Industry: 1982

In this discussion, I shall focus on the recent performance of a group of 249 regular route motor common carriers of general commodities. Consistent financial data are available for each of these carriers for the period 1976-1982. This national data base, maintained by the industry with the assistance of the international accounting firm of Arthur Andersen & Co., contains statistics for carriers which, in 1982, accounted for $13.9 billion of revenues.*

The year 1982 marked the fourth successive year of economic decline for the general freight carriers. The pattern of decline is summarized by the data below.

REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES
SELECTED FINANCIAL STATISTICS
1978-1982
(millions of dollars)

	1978	1979	1980	1981	1982
Operating Revenues	$14,191.7	$15,235.4	$15,322.3	$15,698.8	$13,916.3
Operating Income	$856.1	$587.0	$600.6	$434.5	$143.5
Interest Expense	$146.4	$197.1	$227.3	$225.8	$175.2
Ordinary Income (after-tax)	$489.1	$312.6	$279.4	$143.8	$ 22.1
After-Tax Return on Shareholders' Equity	14.36%	9.03%	8.82%	4.43%	0.70%

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* The data analyzed are primarily drawn from "consolidated" reports, which reflect both the operations of the carriers and the results of their transportation-related affiliated companies.

Initially, note that operating revenues in 1982 were $13.9 billion, down from $15.7 billion in 1981, a decline of 11.4 percent. Then, consider that the operating ratio, the ratio of operating expenses to operating revenue, was 98.97 percent in 1982, leaving only 1.03 cents per dollar of revenues for interest expense, taxes, and other nonoperating items. The continuing deterioration is shown by the trend in the operating ratio:

Year	Operating Ratio
1979	96.15
1980	96.08
1981	97.23
1982	98.97

In 1982, motor carrier operating income was insufficient to pay interest expense:

	1982 (000)
Operating Revenues	$13,916,346
Operating Expense	13,772,892
Operating Income	143,454
Interest Expense	175,234

In response to declining business prospects, the carriers reduced their outlays for operating property and equipment:

Year	Net Carrier Operating Property Additions	Depreciation Expense
1979	$941.8 million	$547.3 million
1980	552.5	580.8
1981	480.8	594.9
1982	218.1	548.4

Since outlays for new property and equipment were below depreciation charges, the carriers actually disinvested in 1980, 1981 and 1982. As a consequence, at the end of 1982, only $3.5 billion was invested in equipment for the provision of the motor carrier service, down from $4.0 billion at the end of 1979.

Year	Carrier Operating Property (Net)	Percent of Accumulated Depreciation to Original Cost
1979	$3,999.6 million	42.6%
1980	3,969.3	44.8%
1981	3,855.3	46.7%
1982	3,525.0	48.7%

In addition, the age of the motor carrier plant has increased in recent years. Note that at the end of 1982, accumulated depreciation equalled almost half (48.7 percent) of the original cost of all fixed assets.*

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* It is informative to contrast these data with those for a broad industrial composite, such as that published by Value Line. The 950 companies included by Value Line account for approximately 80 percent of the income earned by all U. S. nonfinancial corporations.

Year	Net Plant	Percent of Accumulated Depreciation of Gross Plant
1979	$559.7 billion	40.5%
1980	651.5	39.3%
1981	757.5	37.8%
1982	828.1	37.7%

The data below demonstrate that the earnings deterioration suffered by the industry and described above, has been much more severe than that experienced by most other industries.

COMPARISON OF RATES OF RETURN ON EQUITY
VALUE LINE INDUSTRIAL COMPOSITE AND GENERAL FREIGHT TRUCKING
1978-1982

	1978	1979	1980	1981	1982
Value Line Industrial Composite(a)	14.3%	16.8%	14.9%	13.6%	9.6%
General Freight Trucking	14.3%	9.0%	8.8%	4.4%	0.7%

(a) Source: The Value Line Investment Survey: July 22, 1983, p. 958

Financial Distress

Reflecting the elimination of profitability, as set out above, carriers have continued to go out of business or substantially reduce their general commodity operations. In fact, since January 1, 1979, 72 study carriers, which in 1978 accounted for $2.211 billion of revenues, or 16 percent of industry revenues, went out of the general freight business.

Carriers accounting for $3.9 billion of revenues in 1982, or 28 percent of industry revenues, experienced operating ratios of 97 and over in each of the years 1980, 1981 and 1982. These carriers recorded, in 1982, an operating loss of $158.7 million, before the payment of $67.2 million of interest. Clearly, the members of this group are candidates for failure. Taken together with the carriers that have failed, it follows that almost half of the motor carrier general freight system is in danger of being lost.

Reflecting the deterioration in the industry, the market share of the largest carriers increased dramatically, and approached 50 percent of the industry total in 1982:

Year	Revenues of Top 10	Total Revenues	Market Share
1976	$3,987,407	$10,517,145	37.9%
1977	4,724,564	12,141,497	38.9%
1978	5,676,177	14,191,738	40.0%
1979	6,205,662	15,235,382	40.7%
1980	6,409,137	15,322,300	41.8%
1981	6,868,913	15,698,774	43.8%
1982	6,754,559	13,916,346	48.5%

The Ten Leading Carriers: 1982

The ten leading carriers in 1982 achieved operating income of $173.0. Since total industry operating income was $143.5 million, implicit in these figures is the observation that the 200+ carriers accounting for the other half of industry revenues actually experienced a loss from operations, before the deduction of interest:

	Top 10	All Other	Industry
Operating Revenues	$6,754,559	$7,161,787	$13,916,346
Operating Expense	6,581,575	7,191,317	13,772,892
Operating Income	172,984	(29,530)	143,454
Interest Expense	62,795	112,439	175,234
Operating Income Less Interest Expense	110,189	(141,969)	(31,780)

In view of the showing that, to the extent profits were earned in 1982, they were achieved by the top 10 composite, it is important to contrast the pattern of net carrier operating property of the top 10 carriers with that of the general freight industry:

Carrier Operating Property (Net)
(millions)

Year	Top 10	All Other	Industry
1979	$1,649.2	$2,350.4	$3,999.6
1980	1,717.1	2,252.2	3,969.3
1981	1,772.7	2,082.6	3,855.3
1982	1,801.1	1,723.9	3,525.0

The data above demonstrate that modest increases in top 10 carrier investment in plant and equipment have been insufficient to offset the disinvestment by the remainder of the industry. As a consequence, total industry net plant and equipment fell by one-half billion dollars from the beginning of 1980 to the end of 1982!

Summary

Advocates of deregulation have asserted that the deterioration and decline in the motor carrier industry, which I have attempted to portray, should be attributed primarily to the effects of the recent recession. With a rebounding economy, they argue, a leaner (and deregulated) motor carrier industry will participate in and enjoy increased levels of growth and profitability.

The next section of this statement analyzes traffic data of these carriers and demonstrates, I believe, that the financial deterioration described above was primarily associated with the effects of a regulatory policy which encouraged virtually unlimited entry. As a result of that policy, the volume of truckload traffic handled by the carriers has declined markedly, and LTL rates have been increased to offset the increased costs of the inefficiences created.

The final section discusses carrier performance in the first half of 1983. Though the four year slide in profits has been reversed, 1983 profits thus far are meager. The evidence suggests that improved profitability is a consequence of increased revenue yields, since there has been no increase in traffic handled by the carriers, despite the recovery in other sectors of the economy.

II. FUNDAMENTAL CHANGES IN GENERAL FREIGHT CARRIAGE

(1) It is generally recognized that the volume of traffic handled by the general freight motor carriers has declined sharply in recent years. That deterioration has been observed for both shipment counts and tonnage, and has been attributed by some to the effects of severe recession. The table below shows a dramatic decline in tonnage (as measured by hundredweight) since 1979. The table indicates that aggregate tonnage declined by almost 30 percent from 1979 to 1982.

MEASURES OF GENERAL FREIGHT ACTIVITY
REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

Year	Shipments	Shipments Index (1979=100)	Tonnage (cwt)	Tonnage Index (1979=100)
1979	141,117,685	100.0	2,781,120,028	100.0
1980	134,150,418	95.1	2,356,755.067	84.7
1981	130,091,245	92.2	2,286,1[illegible],[illegible]78	82.2
1982	123,071,611	87.2	2,013,765,112	72.4

(2) The significance of the recent decline in tonnage can best be understood by first disaggregating the traffic data above and classifying all such data into two categories -- less-than-truckload (LTL) shipments and tonnage, and truckload (TL) shipments and tonnage. Based on the tabulation below, we see that the post-1979 decline in less-than-truckload (LTL) activity was modest, whether considered on a shipments or tonnage basis.

MEASURES OF GENERAL FREIGHT ACTIVITY
CLASSIFIED AS LTL AND TL
REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

	Less-Than Truckload		Truckload	
Year	Shipments Index	Tonnage Index	Shipments Index	Tonnage Index
1979	100.0	100.0	100.0	100.0
1980	95.8	95.8	77.5	77.2
1981	92.9	94.8	73.3	73.6
1982	88.2	88.3	62.6	61.6

By way of contrast, truckload activity of the general freight carriers declined by almost one-quarter in 1980, and exhibited a further sharp decline in 1982. On the basis of the data above, as well as on the basis of other recent data I have seen for regional groups of carriers, it appears that truckload tonnage of the general freight carriers declined by approximately forty percent from 1979 to 1982! Reflecting this decline, the ratio of truckload revenues to total motor carrier revenues declined from 32 percent in 1979, to 21.1 percent in 1981.

(3) Since LTL traffic suffered only a modest decline in the post 1979 period, while TL traffic declined precipitously, the ratio of LTL tonnage to total tonnage increased sharply! Note below the relative stability of the ratio in the 1976 - 1979 period, whether for the industry generally, or for the regional grouping. Then note the sharp increase in the industry-wide ratio that occurred in the years 1980, 1981 and 1982. Though that ratio is known to increase in a recession year (reflecting the greater falloff of volume shipments), the 1975 data for the ECMCA regional grouping in the table below suggest that the cyclical effects are more modest and of shorter duration than those experienced by the general freight industry as a whole since 1979.

RATIO OF LTL TO TOTAL TONNAGE
REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES
INDUSTRY AND REGIONAL GROUPINGS

Year	Eastern Central Motor Carriers	Industry Nationally
1972	34.2%	n.a.
1973	32.7%	n.a.
1974	34.0%	n.a.
1975	36.6%	n.a.
1976	34.3%	41.2%
1977	34.0%	39.5%
1978	33.7%	n.a.
1979	34.6%	40.5%
1980	40.4%	45.8%
1981	41.0%	46.7%
1982	43.6%	49.4%

Indeed, the more than proportionate decline in truckload shipments and tonnage of the general freight carriers is a direct reflection of substantial new competition for truckload traffic. Such significant new competition was first introduced in the 1979 period when the I.C.C. administratively opened the doors to new entry, and was, of course, reinforced by passage of the MCA in 1980, and the subsequent administration of that Act.

Though reduced economic regulation has increased competitors and resulted in sharply lower truckload volumes to the full-service general commodity carriers, it has apparently not introduced substantial new competitors nor dramatically affected volumes of the LTL business, where substantial capital investment is required of new entrants. We may therefore infer that much of the decline in tonnage experienced by the general commodity carriers in recent years reflects new entry into the truckload business, and may not be attributed to the effects of the recession.

(4) My analysis indicates that the major decline in TL activity of the full-service carriers occurred in the class-rated TL traffic, the rates for which are generally intended to recover fully distributed costs. Note the dramatic decline in the number of class-rated truckload shipments from 1979 to 1980, and again in 1981. Indeed, the number of class-rated TL shipments carried in 1981 was 43 percent below the number carried in 1979.

TRUCKLOAD SHIPMENTS
REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

Year	All Truckload	Class-Rated	Commodity-Rated
1979	5,472,059	1,868,195	3,603,864
1980	4,238,713	1,361,277	2,877,436
1981	4,011,880	1,060,667	2,951,213
1982	3,424,077	734,718	2,689,359

By way of contrast, the decline in the value of commodity-rated TL traffic, though substantial, was not as sharp as the decline in the class-rated TL traffic. The dramatic decline in truckload business suffered by the regular route general commodity carriers has had a disproportionate effect on general freight carrier profitability. That is to say, the data indicate that the adverse effects of new entry into the truckload business have been felt especially in the class-rated truckload area.

(5) The phenomenon described herein has substantial implications for the viability of the general freight carriers. Specifically, the loss of substantial truckload volume appears to have reduced the efficiency of the general freight business since these truckload movements were often used by the carriers to balance their systems. The integrated general freight system which handles both TL and less than truckload (LTL), has thus been impaired.

But what about the less than truckload (LTL) market which, in 1979, accounted for 96 percent of all shipments and 68 percent of all general freight revenues. The evidence dramatically demonstrates that that (LTL) market has borne the brunt of reduced entry regulation in trucking. That is to say, the additional costs which have been thrust upon the general freight motor carriers because of the loss of truckload business have had to be passed on to the LTL shippers. On any basis of measurement, the revenue yield from LTL freight has increased each year since the elimination of entry controls.

CHARACTERISTICS OF LESS THAN TRUCKLOAD FREIGHT REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

	1979	1980	1981	1982
Average Weight per LTL Shipment (CWT)	8.44	8.30	8.45	8.31
Average Length of Haul	604.1	610.7	625.9	645.3
Revenue per:				
LTL shipment	$ 57.00	$ 65.01	$ 73.88	$80.73
LTL CWT	$ 6.87	$ 7.83	$ 8.73	$ 9.71
LTL tonmile	.227	.256	.279	.301
LTL shipment of 5,000 lbs. and over	$372.99	$424.60	$461.96	$496.58

Thus, the common perception that LTL rates have declined since the MCA is mistaken. Rather, revenue yields have had to increase to offset increased costs. In the aggregate, the discounting which has taken place has had the effect of lowering effective yields to the level where virtually all profit is eliminated. That is to say, even with the increased revenue yields since 1979, motor carrier profits have declined sharply, and were just about eliminated in 1981 and 1982!

(6) To sum up, then, LTL revenue yields have continued to rise, despite deregulation and wide-scale discounting. Yet, profits have continued to decline sharply, implying that increased yields are necessary just to offset increased costs. Hence, administrative deregulation prior to 1980, and the current Commission's implementation of the MCA of 1980, have had the effect of abating the increase in rates for volume truckload shippers, and increasing costs of and rates for LTL freight. In the process, the full-service general freight motor carrier industry has been caught in the middle, and has watched its profits decline for almost half a decade. This decline in and elimination of profits threatens the ability of the industry to renew its plant and equipment.

(7) In this initial analysis, I also inquire as to whether the very largest motor carriers, including some of those whose common stocks have experienced notable increases in recent months, have been able to avoid the pattern of deterioration exhibited by the industry as a whole. To do so, I rely upon the top 10 carrier grouping which, it will be recalled, accounted in 1982 for almost 50 percent of the revenues of the industry sector.

The data indicate that that in terms of volume, the very largest carriers have in fact fared somewhat worse than the industry sector as a whole. Yet this group of carriers has been able to earn a positive (albeit, small) profit in the fact of generalized industry financial disaster. It is my hope that when my more extensive research study is completed and submitted to this Committee, I will be able to shed additional light upon the differences between the top carriers which, as a group account for almost half of revenues, and the industry as a whole.

III. THE FIRST HALF OF 1983

Available data for the first half of 1983 strongly suggest that the general freight motor common carriers are not sharing in the improved level of economic activity currently being experienced throughout the economy. Though the year-to-year decline in profitability, which began in 1979, has been reversed in 1983, that improvement appears to be the result of rate increases and cost cutting, rather than the consequence of increased traffic volumes.

The table below sets out first-half statistics for the general freight carriers for each of the years 1981, 1982 and 1983. The data show a composite industry operating ratio for the first half of 1983 of 95.9, improved from 99.2 in 1982. The reversal of four years of earnings decline must be viewed with caution.

First, earnings levels in 1983 appear to approximate those achieved in 1981. The rate of return on equity in 1981 was 8.82 percent, hardly an adequate earnings level.

Second, one-quarter of the carriers continue to experience operating ratios in excess of 100, indicating that revenues are insufficient to cover operating costs, before taking into account interest. Thus, though the number of firms with ratios in excess of 100 has declined, the viability of a substantial number of firms is subject to question.

Third, the improvement in operating results has in fact been concentrated in the hands of a few large carriers. Comparative data shown below indicate that the ten largest carriers, though accounting for half of industry revenues, accounted in the first

COMPARATIVE MEASURES OF TRUCKING ACTIVITY AND PROFITABILITY GENERAL FREIGHT MOTOR CARRIERS FIRST-HALF OF 1981, 1982 AND 1983

	First-Half 1981	First-Half 1982	First-Half 1983
Revenues (000)	$6,551,199	$6,280,832	$6,667,241
Operating Expense (000)	6,305,224	6,231,291	6,393,488
Operating Income (000)	245,975	49,541	273,753
Operating Ratio	96.2	99.2	95.9
Net Income After Tax (000)	138,152	7,204	141,000
Tons - LTL	25,525	23,464	24,132
Tons - TL	36,199	30,230	29,348
Total Tons	61,724	53,694	53,480
Shipments - LTL	65,911,845	61,477,776	62,156,211
Shipments - TL	2,503,578	2,152,078	2,100,251
Total Shipments	68,415,423	63,629,854	64,256,462
Number of carriers	200	200	200
Number of carriers with Operating Ratio Equal to or Above 100	39	92	53

COMPARATIVE MEASURES OF TRUCKING ACTIVITY AND PROFITABILITY TEN LARGEST GENERAL FREIGHT MOTOR CARRIERS FIRST-HALF OF 1981, 1982 AND 1983

	First-Half 1981	First-Half 1982	First-Half 1983
Revenues (000)	$3,100,944	$3,041,128	$3,282,943
Share of Total Industry Revenues	47.3%	48.4%	49.2%
Operating Income (000)	$ 155,421	$ 65,609	$ 192,817
Share of Total Industry Operating Income	63.2%	132.4%	70.4%
Net Income After-Tax (000)	$ 96,560	$ 49,740	$ 116,506
Share of Total Industry Net Income After-Tax	70.0%	690.4%	82.6%

half of 1983 for 70 percent of operating income (before-interest before-tax) and 83 percent of after-tax income. Thus, the 190 carriers accounting for the remaining half of industry revenues are essentially operating at breakeven in the midst of a robust recovery.

Finally, general freight trucking activity in the first-half of 1983 is unchanged from its level in the first-half of 1982. Given continued unlimited entry into the TL business, the volume of TL traffic handled by the general freight carriers, measured either on a shipments or tons basis, fell still further in 1983. This decline in tonnage was offset by a modest (2.8 percent) increase in LTL tonnage in the first-half 1983 relative to 1982.

In summary, then, the data do not support the assertions of those who argue that the extended decline in general freight carriage was attributable primarily to cyclical forces. Though a robust recovery is underway, truckload activity of these carriers continues to decline, thereby adversely affecting the ability of the carriers to achieve operating efficiencies and balance their system operations. Thus, the policy of unlimited entry into trucking has had the effect of increasing the costs of handling LTL freight. Under the current environment, carriers are unable to recover those additional costs, and have been forced from the market.

Mr. ANDERSON. Please proceed.

TESTIMONY OF GEORGE ZIGICH, VICE PRESIDENT OF TRAFFIC, AAA TRUCKING CORP., REPRESENTING AMERICAN TRUCKING ASSOCIATIONS, INC., ACCOMPANIED BY JOHN W. McFADDEN, JR., COUNSEL, AND JAMES C. HARKINS, EXECUTIVE DIRECTOR, NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION; AND DR. IRWIN H. SILBERMAN, ECONOMIC AND FINANCIAL CONSULTANT

Mr. ZIGICH. Thank you, Mr. Chairman.

I do have with me today Mr. John McFadden, one of our attorneys, and Mr. James Harkins, who is the executive director of the National Motor Freight Traffic Association, and, of course, Dr. Irwin Silberman, who will also be representing American Trucking Associations today, as I am.

I am a vice president of traffic of AAA Trucking, who are a medium-sized motor common carrier, based in Trenton, N.J., and I am appearing on behalf of American Trucking Associations here today.

I would like to say frankly that we believe there is one central overriding question here today, a fundamental question, and that is, is our industry and thus, our country, at a point where it is no longer governed by its laws, but rather by the dictates and wills of a handful of unelected bureaucrats, as they pursue their own personal philosophies and their free marketplace advocacy and their laissez-faire attitudes, contrary to the very law that they have sworn to uphold, and administer, and implement as they have a sworn obligation to do so.

Initially, the ATA, as this legislation unfolded, fundamentally supported it. Obviously, the industry had some rigidities built into it over 45 years, and it did support this legislative act of 1980 which called for essentially relaxed entry into the motor carrier industry and a heightened level of competition. We still fundamentally support that law, as it was enacted, today, and our problem is not with the law, but with the way it is being administered and implemented.

I would just like to step back for a minute and see what has happened. Initially, the Interstate Commerce Commission, through a variety of techniques which they employed—many of them we feel were improper and not allowed properly under the law—brought in another 10,000 entrants into the motor carrier industry and issued something like 60,000-plus certificates to various carriers that were already in the industry. This was something like a 43-percent increase in the number of carriers, new entrants, that then came into the industry, and really, when you think about it, at the height of the greatest recession since the Great Depression, to add another 10,000 carriers at that time really has a tinge of irresponsibility to it. In effect, it spread the available given amount of finite traffic thinner, and thinner, and thinner through all the various carriers which were available to move it; thus, unit costs invariably increased. To compound that situation, once having introduced this extraordinary new competitive element, the Interstate Commerce Commission, in our view and judgment, obviously decided to abandon their rate regulatory responsibility, and in effect what they said is that: "We do not have rate regulatory responsibilities. This law, the laws of the Interstate Commerce Act and the Motor Carrier Act of 1980, says that rates must be just and reasonable. They must not be discriminatory nor unduly preferential or prejudicial. The present law does not allow rates to be destructively competitive. It does not allow carriers to engage in unfair competitive practices." And, as the law unfolded, certain carriers obviously said to themselves: "Let's see just how low we can publish rates," and they proceeded to do exactly that. Carriers who then had the business at that particular time and saw these other carriers moving to come in and take their business away filed protests against those carries—filed protests on the basis that those carriers who were seeking to take their business away were doing it by a mechanism that they were not allowed to do, namely, filing rates below cost. This law says that is not allowed to happen.

After one series of petitions after another, in which the cost section of the Interstate Commerce Commission itself acknowledged that that proponent carrier seeking to take this business was publishing rates below cost, the Interstate Commerce Commission Suspension Board refused to suspend—its appealing group refused to suspend—and in sending one signal back after another to the motor carrier industry, said in effect, "We really don't care how odious these rates are, how below cost they are, how preferential they are, how discriminatory they are. We are going to let you do as you see fit, and we hold that that is wrong. We hold that that is a violation of the very law that they have sworn to uphold."

Then, as we went further into the situation, we looked for the Commission to issue some standards, and we said in Ex parte MC-166: "Why don't you issue some standards and let us know where we stand in this, so we know what the rules of the game are in this new Motor Carrier Act of 1980?" And we were not so naive as to be asking for specific and precise formulas. That is not what we were looking for. What we were looking for was some reasonable standards. I for one, and many of us, thought that what we should have is, if nothing else, a standard that said: "You must not publish rates below cost—you are the proposing carrier—below your cost," and then enforce that standard. We thought why couldn't they codify that and simply come out and further say: "And you may not publish discriminatory rates, prejudicial rates, preferential rates," and enforce those standards. What is wrong with those standards? We hold there is absolutely nothing wrong with those standards. Did they? No. They walked away from their responsibility in that regard, issued a rather vague, amorphous statement in 166, and in effect, said: "Let's continue as you see fit." We hold that is wrong. We hold that they violate their responsibilities in that regard. We hold that what they do there is implement their own free-marketplace advocacies, implement their own free-marketplace philosophies, and that is not what this law calls for. This law says rates must be just and reasonable. This law says that rates must not be unduly discriminatory. This law says that they must not be unduly prejudicial or preferential. And when you get into a situation where you are talking about free marketplace and laissez-faire attitudes, that is thrown right out the window.

I just want to take 1 minute and talk about competition, if I can, please. Not for 1 minute do we in the industry think that we are going to turn the clock back and get to a stance or a position where there is no competition, or there is a very limited amount of competition. That is not true at all. We are not talking about that. In my own little company, we compete with just about 2,000 carriers, and I would suggest to you that that is a tidy bit of competition. I would suggest to you that there are precious few of our shipper friends who compete with 2,000 business entities, and we really need not be lectured on the virtue of competition. We are not quarreling with the element and the principle of competition—absolutely not—under this law. However, what we are quarreling with, and what we are going to vigorously oppose as long as we have the means to do so is quarreling with destructive competition and unfair competitive acts. And by destructive competition, I mean those rates that are published below the cost of the proposing carrier. We are going to quarrel with that under this law and under the law of the land, and we are never going to cease that. We see some evidence of that in other industries right now.

Just quickly—and I do not want to get beyond my time—if the Commission then, through their own techniques, opened the floodgates as far as entry is concerned and then walked away from their regulatory rate responsibility and did not issue either in individual cases or in broad-based cases those standards and act in a right and proper and responsible manner, if they did not do that, and if they allow these injuries to compound on this industry, which really has been devastated by the recession, as other industries—we do not quarrel with that, and to boot—and I have to put this in, too, please—we have this ERISA problem where carriers, when it is the right and proper time to leave this industry, cannot even leave it; then they have really created an intolerable condition for us. Then, to top it off, they have just recently come out with another—you can see what they want to do. They want to set the stage for another round of administrative deregulation in, I believe it is MC 172, in which they call for the abolition and cancellation of collective ratemaking on shipments under 1,000 pounds or perhaps all the way up, abolition of collective ratemaking in its entirety. To us, that is really improper and irresponsible on their part. Here we are, an industry that amongst other things, has in its present law, an admonition to the Commission that: "You are not to go beyond the tenets of the law today, the act of 1980." One of the provisions that the law called for was a Rate Study Commission to look into the very complex question of collective ratemaking. It looked into that question over a long period of time, held extensive hearings, came out with a majority and a minority report. I need not tell you the whole matter is still a controversial one, and it made its report to Congress, to the President, and obviously, it is just as clear as can be in our mind that that is an issue that should be dealt with by Congress and the administration as to the entire question of collective ratemaking, its continuation, its abolition, its partial abolition, or whatever, and for the present Interstate Commerce Commission to attempt to usurp the authority of Congress in that regard, to attempt to preempt the issue, we think, is fundamentally wrong, and we oppose that.

In conclusion, I would like to make this request. As a consequence, we strongly urge this Commission to admonish the Interstate Commerce Commission immediately to enforce the statutory standards for entry and rates fairly and fully and direct the ICC not to attempt any further deregulatory actions contrary to the provisions of the 1980 act relative to tariff filing or rate bureaus. Specifically, because of the serious departures from the proper agency conduct blatantly exhibited by the ICC, we respectfully respect this committee to promptly commence an investigation into the ICC's administration of the Motor Carrier Act, either through the committee's own investigative staff, or if necessary, by appointment of a special council to conduct such investigation:

I believe I went a little over my time, Mr. Chairman. Thank you very much.

Mr. ANDERSON. Thank you very much, Mr. Zigich, and before we ask you questions, I think we might as well hear Dr. Silberman's statement.

Dr. Silberman.

Dr. SILBERMAN. Thank you, Mr. Chairman and members of the subcommittee. My name is Irwin Silberman, and I am an economic and financial consultant, with offices in Potomac, Md.

Over the past 15 years, I have conducted numerous studies of the financial position of the motor carriers of general freight.

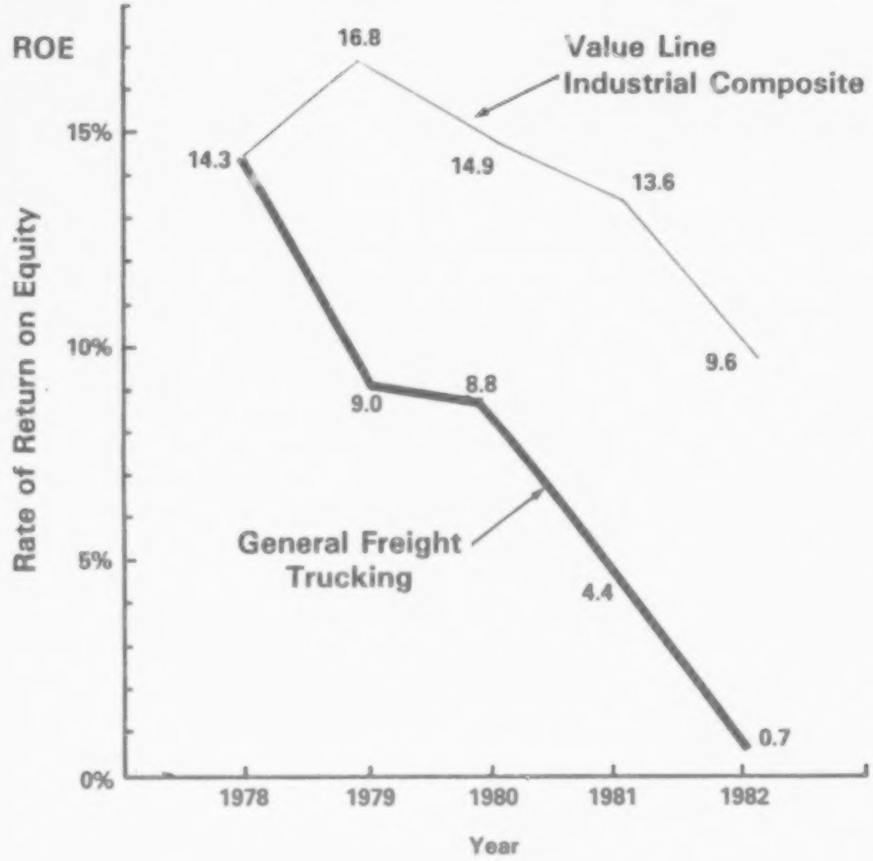
I appreciate this opportunity to appear before the subcommittee and to discuss the financial position of the general commodity carriers. These carriers in 1982 accounted for $13.9 billion of revenues. They are the full-service, integrated, LTL/TL general freight carriers.

The major areas of concern I wish to bring to the attention of the subcommittee are, first, that 1982 was the fourth successive year of economic decline for these carriers. Indeed, revenues of these carriers have remained unchanged since 1979; in 1982, they were down by 11 percent. In fact, in 1982, interest expense exceeded operating income for these carriers by $32 million. So this composite of general freight carriers in 1982 actually was unable to meet its interest expense.

To show the implications of that and the declining fortunes of the general-freight sector in the past 5 years, I have prepared a chart which compares the rates of return on equity of the general freight carriers with those of the value line industrial composite—and I believe that a look at the chart indicates some striking comparisons.

[Chart referred to follows:]

Comparative Rates of Return on Equity Value Line Industrial Composite and General Freight Trucking 1978-1982



Dr. **Silberman**. Gentlemen, on what we have plotted here, the red line reflects the rate of return on equity of the industrial companies. Value line indicates that these companies account for 80 percent of all income generated in the industrial sector, including nonfinancial corporations and excluding financial corporations. That is to say, you have 80 percent of the income of the nonfinancial corporations represented. Note that in 1978 the rates of return on equity for general freight trucking and for the value line industrials were identical.

Notice that in the depths of 1982, the value line industrials reached a low of 9.6 percent ROE. The motor carriers have been shooting down since 1978. In 1981, their return on equity was 4.4 percent. It was 0.7 percent in 1982. So effectively, in 1982, there were no motor carrier industry earnings at all. In fact, on an operating basis, the carriers were unable to make even their interest expense.

The second point, gentlemen, that I would like to make is that carriers accounting for more than 16 percent of industry revenues have gone out of business since 1979. In addition, another 28 percent of revenues are accounted for by carriers who are candidates for failure, who have had no profits for the last 4 years.

Reflecting the financial distress that is obvious from that chart and from the associated data, the share of the general freight market of the largest carriers, the 10 largest carriers, has increased from 37.9 percent in 1976 to almost 50 percent in 1982, with the most dramatic increases having occurred in 1980, 1981 and 1982.

So, we have 37.9 up to almost 50—48.5 percent—the 10 largest carriers now account for half of the business.

Consistent with the fact that revenues have not grown—indeed, they have declined—is that there has been disinvestment by these carriers. In other words, the general freight carriers have actually reduced their investment in the plant and equipment necessary to generate the motor carrier service. And in the period from the end of 1979 to the end of 1982, in a short period of 3 years, there was a reduction of one-half billion dollars of investment by these carriers.

More disconcerting is the fact that the average age of equipment used by the motor carriers has increased dramatically. In my full statement, I contrast the average age of the motor carrier equipment with trends in the average age of equipment of the value line industrials and, you will notice, that there was a great disparity. The motor carrier average age is getting longer in the industrial sector, average age is getting shorter.

Members of the subcommittee, we have heard in the last 2 years that the kinds of financial results that I am reporting to you are a consequence of economic recession rather than of regulatory policy, and that when the economy turns around, that the motor carrier industry, after this shakeout, will participate and enjoy the fruits of that recovery. But here we are in the midst of a robust economic recovery, and I am able to report to you the following financial results for the motor carriers for the first half of 1983.

It is true that the operating ratio of the motor carriers has improved from 99.2 percent to 96 percent. What that means is that in the first half of 1982, for every dollar of revenues, the carriers incurred 99.2 cents of expense before the payment of interest. In

1983, they incurred only 96 cents of expense before the payment of interest for every dollar of revenue. Now, this is a composite number, and as I will point out in a moment, this improvement is nothing to rejoice about.

Net income increased from $7.2 million for the first half of 1982 to $141 million the first half of 1983. There is no question that the decline in profitability which these carriers have been experiencing for the last 4 years has been arrested. But we may not infer from that fact that earnings are adequate—for the following reasons. First of all, in the first half of 1983, in the midst of a robust recovery, of the 200 carriers for which we have data, 53 operated at operating ratios in excess of 100. That means one-quarter of the carriers in this general freight system in the first half of 1983 continued in a situation where their operating expenses before interest exceeded their operating revenues. And if you use as a cutoff a 97 operating ratio, which would leave 3 cents for the payment of interest and other expenses, unfortunately, of the 200 carriers for which we have data, 102 operated and continued to operate at operating ratios in excess of 97.

Thus, the arresting of the decline and the accompanying improvement is not a widespread phenomenon. It is a highly concentrated improvement. And I can report to you that the top 10 carriers account for 83 percent of the net income in the first half of 1983, which means that out of a group of 200 carriers, the other 190 carriers are just there, trading dollars. They are not making any profits. The profit improvement on a composite basis, on an aggregate basis, is being experienced solely by a handful of carriers which, as I indicated to you, account for 50 percent of the revenue.

I believe, and I am sure that you believe, that this statistic and this set of facts deserves additional study and consideration.

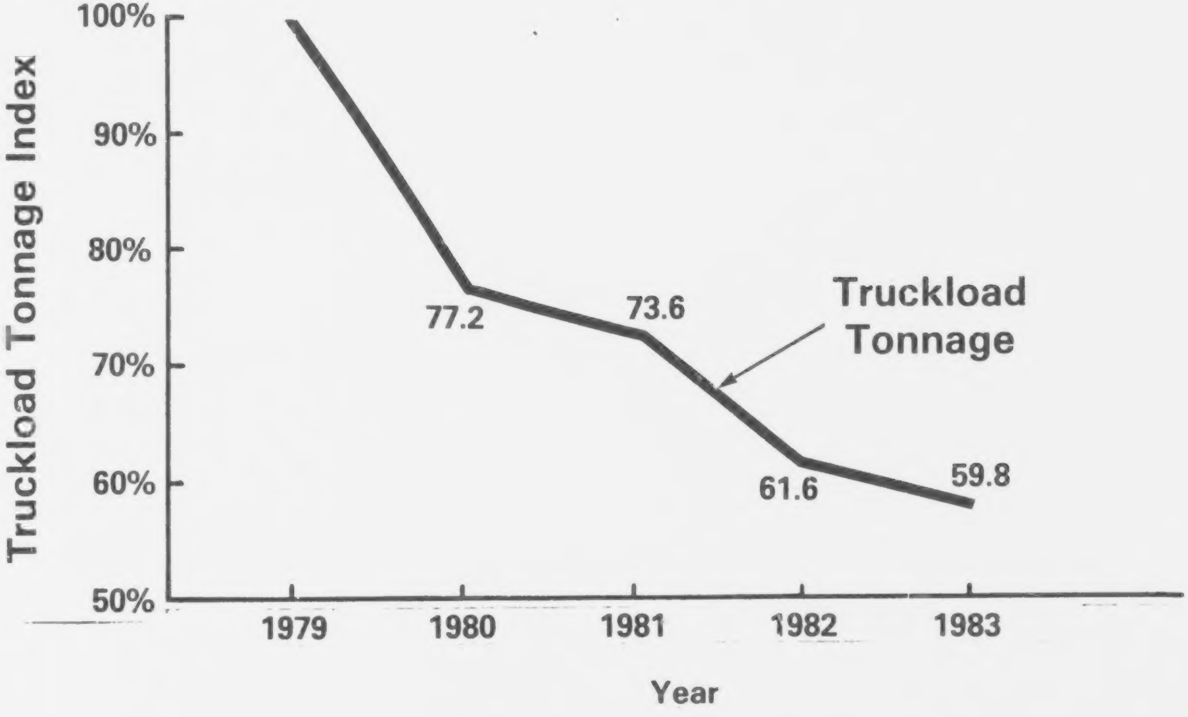
I now have to address myself to the set of circumstances which essentially has resulted in the disenfranchisement of these 190 carriers which constitute the backbone of the general freight industry.

The answer lies in the trucking activity data for these carriers. First of all, on a weight basis, tonnage in 1982 was 28 percent below what it was in 1979. Now, that is total tonnage, the sum of LTL tonnage and truckload tonnage. But if we disaggregate the tonnage figures and look at the truckload and the less-than-truckload, we can see what is really happening.

Toward that end, I have prepared a second chart to which I would like to refer. We have plotted on this chart truckload tonnage of the general freight carriers. We will start with 1979, and you can see that truckload tonnage has been declining each and every year. By 1982, truckload tonnage was only 61 percent of whatever it was in 1979. In the first half of 1983, despite the expectations of those who had asserted that, with recovery, the pattern would be reversed, truckload tonnage continued to decline even further below the 1982 level.

[Chart referred to follows:]

Truckload Tonnage



Dr. SILBERMAN. So at this point in time, you can see that there has been a loss of truckload tonnage for motor carriers, for the general freight carrier, equal to 41 percent of what their tonnage was in 1979, when the deregulation movement began.

Mr. SNYDER. Mr. Chairman

Mr. ANDERSON. Yes, Mr. Snyder.

Mr. SNYDER. I know you are not ready for questions, but as I understand it, we are looking at the impact of the 1980 act, and I think it would be helpful to us, as Dr. Silberman shows us these charts, to point out the difference, if it does exist, between the trend that was in existence between the beginning of his chart and 1980, vis-a-vis since 1980. As I look at it, I do not see the substantial difference that would lead us to believe that the 1980 impact has caused any more of a substantial decline in either the earnings or the tonnage than was already prevalent prior to the 1980 act, nor do I see that it has improved it any, either, which we, of course, had hoped. But if you could do that, I think it could be helpful to us.

Mr. ANDERSON. Dr. Silberman, you heard the general question.

Dr. SILBERMAN. Yes; the reason that I used 1979 as the base is that deregulation, much of which was codified in the 1980 act——

Mr. SNYDER. In July 1980.

Dr. SILBERMAN [continuing]. Yes—really began in 1979, with administrative deregulation by the Interstate Commerce Commission, in terms of entry, for example. It is the opening of entry which has impacted upon the truckload business and has permitted the many, many other sources to enter the industry and to attract that tonnage from the general freight carriers. That is the reason that I used 1979 as the starting point for my chart. If you want to start with 1980 as the base, I do not believe that any of the patterns are changed. For example, in 1980, the ROE in general freight trucking was 8.8, and it went down to virtually zero by 1982. So I do not think that beginning with 1979 distorts any of the patterns. It really makes the experience more realistic, because that is when what was codified by the act in 1980 really began. But the pattern would be no different had I started in 1980.

The truckload tonnage, as I have indicated, has declined much more sharply than the less-than-truckload tonnage, and indeed, in 1982, LTL tonnage was 12 percent below 1979 levels. So what we have is that 12 percent of the LTL business was lost; 40 percent of the truckload business was lost. Well, what is the implication of that? The general freight motor carriers, the full-service carriers, have used truckload freight for balance, and the loss of almost half of their truckload freight has distorted the operating relationships, caused inefficiencies, and as a consequence, the viability of the integrated general freight carriers has been impaired. As a result of these factors, the loss of truckload tonnage has adversely affected LTL rates.

On page 15 of my prepared testimony, I present a table that demonstrates that revenue yields on LTL freight increased sharply over this period, and there is a direct association stated between the increase in those LTL yields and the loss of truckload tonnage.

Now, the advocates of deregulation have said, "Don't worry. The phenomenon is due to a bad economy. Everything will be OK when the economy turns." In fact, those predictions are not so. I have already shown that profits in 1983, to the extent that they were earned, are concentrated among a few carriers. Second, truckload tonnage continued to decline in the first half of 1983, though LTL tonnage was up slightly by about 2.8 percent. Given the slight increase in LTL, and the continuing decrease in truckload, total tonnage in the first half of 1983 is no higher than total tonnage was in the first half of 1982. But, in 1982, we were in the depths of a recession nationally, and in the first half of 1983, we are in the midst of a robust recovery.

In my view, the evidence is clear that if the current regulatory circumstance continues, there will result the demise of additional carriers, a further increase in the concentration of the very largest carriers, and an increased likelihood of the necessity for further increases in LTL yields as a consequence of unlimited entry and other Commission policies today.

Thank you very much.

Mr. ANDERSON. Thank you, Dr. Silberman, and thank you, Mr. Zigich, for fine testimony.

Mr. Zigich, would you agree to the proposition that we seem to be facing the same regulatory situation that we faced immediately prior to the Motor Carrier Act of 1980, and if you do, do you believe it will be necessary to enact new legislation in order to get the ICC to implement the law in the manner requested by you?

Mr. ZIGICH. I believe, sir, that we are in that posture right now and in that stance, and I frankly am not an expert in the law. If there is no compelling way to make the present Commissioners implement and administer this law, if there is no compelling way to do that—and I really am not an expert in that—then we should have additional legislation, if that is what is required, to make them—using my own words—do their job, implement the law.

Mr. ANDERSON. Mr. Zigich, at present, the Commission is considering a case that has serious consequences with respect to the consequences of rate bureaus. The proceeding I am referring to is Ex parte MC–172, Withdrawal of Antitrust Immunity for Collective Rate-Making on Small Shipments. I understand that the title of the proceeding is misleading because it, in fact, seeks comment on removal of antitrust immunity across the board.

First, in your opinion, what effect would elimination of antitrust immunity for collective ratemaking for small shipments have on the industry and on the shippers?

Mr. ZIGICH. I believe, sir, on the industry, it would have a devastating impact, the abolition and elimination of collective ratemaking, on all shipments, and surely on shipments less than 1,000 pounds, and that is the case. They are looking to and thinking about abolishing collective ratemaking on all shipments.

Mr. ANDERSON. Also in your opinion, what effect would elimination of antitrust immunity for collective ratemaking across the board have on the industry and on the shippers?

Mr. ZIGICH. I think it would be destructive and produce far more chaotic conditions than we have in the industry today, which I believe are very chaotic now.

Mr. ANDERSON. Now, the Motor Carrier Act was enacted in 1980. Since that time, have the carriers relied more or less on rate bureaus for setting rates, and what effect, if any, has this had upon the carriers and the shippers?

Mr. Zigich. There is no question, sir, that the carriers are now making far more of their rates independently, and they are doing that through either independent action, filing the rates in various bureau tariffs, or filing them in new individual tariffs.

And I would just like to make my point again, please. The right of carriers to exercise independent action or file their own tariffs individually—no one quarrels with that, absolutely not. But we have a situation today where overwhelmingly—overwhelmingly—we have a proliferation of below-cost rates, and that is our problem today. As long as carriers keep their rates above cost, whether it be collectively made, individually, independent action made in the Bureau tariffs, or in individual tariffs, that is our problem.

Mr. Anderson. Dr. Silberman, in your testimony before the Senate Subcommittee on Surface Transportation, you stated with respect to the data for the first half of 1982 that:

> The general freight motor common carriers are not sharing in the improved level of economic activity currently being experienced throughout the economy and, through the data, indicate that the year-to-year decline of profitability, which began in 1979 and has been arrested in 1983, that the improvement factor seems to be the result of rate increases and cost-cutting rather than the consequences of increased traffic volumes.

Now, first, where have the major rate increases occurred, in other words, are they in the LTL traffic sector?

Dr. Silberman. Yes, sir.

Mr. Anderson. And can you give us some idea of how much those increases are?

Dr. Silberman. Mr. Chairman, in my prepared testimony on page 15, I have a table which sets out the revenue yields on different types of shipments, and I believe that a perusal of that table would lead one to determine the approximate amount of the increase.

Mr. Anderson. Where has the major costcutting occurred?

Dr. Silberman. I believe throughout the system, and including the labor content. You have, in addition, no new outlays to speak of for plant and equipment, and as a consequence, you are not using the most modern, up-to-date equipment. The increase in the average age of equipment, because of that costcutting, we are going to have to pay the piper for that down the road. But you have cuts in labor, you have cuts in equipment. The reason that I made that point is that when we take a look at the tonnage figures for 1983, they are not up; they are at the same level as they were in 1982. But yet, profits have increased over the 1982 level. So it is a combination of an increase in revenues and a reduction in costs that has caused or that has permitted the carriers to achieve some profits in 1983.

Mr. Anderson. Do you have any data on the profitability of the motor carrier industry for the third quarter of 1983? If you have that data, that, in your opinion, does that reflect—and maybe after doing it, you would like to make a projection for all of 1983. That was going to be my next question, anyway.

Dr. Silberman. I tried yesterday to get some data on what is happening in the third quarter. What we have seen so far reflects the fact that some of the public carriers have released their earnings. I was able to secure in total data for approximately 10 carriers, a few public, a few nonpublic. And on the basis of my perusal, I noticed that many had gone down, and several had gone up. So it is a mixed bag, even in the third quarter. I looked more at the tonnage numbers than at the profit numbers, and I was shocked to see that many of the carriers continue to experience declines in tonnage in the third quarter. Now, some have experienced increases, but I would point out to the subcommittee that what is happening reflects a redistribution, if you will, in this industry, and that is clear, just from the fact that the top 10 carriers achieved 83 percent of the earnings. If that pattern continues, you would expect to see improvement in a very select group, and unfortunately, because several of those carriers are public, those are the ones that hit the newspapers. Thus, from reading selected earnings reports in the newspapers, one may not infer what is happening to the industry, because what you are seeing are the reports of the survivors, rather than of the carriers comprising the backbone of the industry, the broad base of the industry, which continues just to trade dollars, at the very best.

Mr. ANDERSON. So at this time, you probably would not want to make a projection for 1983?

Dr. SILBERMAN. That is correct.

Mr. ANDERSON. Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman.

We certainly appreciate your testimony today, gentlemen. Do I infer from your testimony that the problem, as you see it, is with the ICC's action, and that the 1980 act in itself is essentially OK, and that what we have got to do is change the ICC's interpretation of the act, or, do you go beyond that and recommend substantial changes to the act itself?

Mr. ZIGICH. I will answer, Mr. Shuster, that we feel that the act properly implemented, we can live with it, as long as it is properly implemented. And our problem today is with those charged with the proper implementation, and we feel that they are not implementing it. In fact, they are implementing their own philosophy and their own free-market advocacy.

Mr. SHUSTER. Dr. Silberman, would you want to comment on that?

Dr. SILBERMAN. Mr. Shuster, that question is in an area in which I believe Mr. Zigich has competence.

Mr. ZIGICH. Can I qualify my reply?

Mr. SHUSTER. Surely.

Mr. ZIGICH. You will have to forgive my nervousness here. But the one remedial thing that we do call for, and we have had that legislation proposed in the House as the extension of the single-line antitrust immunity, and of course, we are foursquare behind that, yes.

Mr. SHUSTER. My second question is: To what extent, if any, is the trucking industry losing tonnage to other modes? I hear stories in the railroad industry, for example, that as a result of the Staggers Act, and essentially, deregulation in that mode, that they have been picking up tonnage from other modes. Can you comment on that, or quantify it?

Dr. Silberman. We have been attempting to get a handle on how much of that has been lost to other modes. The best information that I have been able to get my hands on indicates that what the railroads, for example, have been able to pick up is just a very, very small part of what the general-freight carriers have lost. You are talking here about having lost almost one-half of all truckload tonnage in a 3-year period. And we have not seen that kind of corresponding increase in the railroad numbers.

Mr. Shuster. And also, one would think that with pricecutting, one industry would not be affected by another industry raiding it. Would that make sense to you?

Dr. Silberman. I believe there are a whole series of competitive factors here which would come into play. I would not want to prejudge that. But the numbers that I have seen for railroads, for example, it is impossible to trace the general-freight tonnage lost to the railroads.

Mr. Shuster. So the basic question is: Where did that tonnage go? And I suppose the answer is some percentage of it was lost due to the recession, some percentage of it went to LTL—where did the rest of it go?

Dr. Silberman. The general belief is it has gone to other types of carriers that have come into this market, some just individuals who have gotten a truck and come in and thrown a number out and gotten the freight; some other types of "ICC-regulated"—and I will put that in quotes—carriers that have now gotten into this business. There are just a whole menu of places where we expect that it has gone.

Mr. Shuster. And yet you say that the largest carriers are the ones who seem to be surviving and indeed, reaping 83 percent of the profit or whatever the statistic was. What enables the largest carriers to succeed in this environment?

Dr. Silberman. Mr. Shuster, I cannot answer that question. I do not know the answer to that question.

Mr. Shuster. Would Mr. Zigich or anybody else like to take a crack at that?

Mr. Zigich. No; I really would prefer to pass on that, because I would then have to analyze in some detail, which I am not capable of answering, and I surely have not done it, as to the reasons that we are having that phenomenon.

Dr. Silberman. I would like to point out that one of the things one would expect in this kind of environment is that, if anything, the truckload tonnage would increase as private carriage, for example, comes back to the common carrier mode. And so it would be possible and in fact, likely, that the kind of loss that is exhibited on that chart is really a larger loss. It is very difficult to account for all of that traffic.

Mr. Shuster. Thank you very much.

Thank you, Mr. Chairman.

Mr. Anderson. Mr. Snyder, do you have questions?

Mr. Snyder. Let me ask one quick one here. As I perceive the problem, I believe you said 249 carriers were in existence when you started making the charts?

Dr. Silberman. That is correct.

Mr. SNYDER. Isn't your problem with deregulation in effect the same problem that Braniff had, and perhaps Continental and Eastern, that that business in those established carriers, when we deregulated the airlines and siphoned off the low-cost carriers such as New York Air and People Express—they are making money—and the big ones who were saddled with the CAB's regulatory rate fixing—that guaranteed them return—did not make them exercise a certain amount of efficiency—have caused them the problem? Isn't there a parallel?

Dr. SILBERMAN. No. I would disagree that there is a parallel, because I do not see airlines making money today at all.

Mr. SNYDER. Well, U.S. Air, Piedmont, and some of those are.

Thank you.

Mr. ANDERSON. Gentlemen, I want to let you go at this time, because we do have to go vote, and that will take about 15 minutes, and I do not want to hold you here.

So at this time, we will stand in recess, and when we come back we will hear from the Brotherhood of Teamsters.

So, thank you very much, Mr. Zigich, Dr. Silberman, Mr. McFadden, and Mr. Harkins, for your presentations.

[Short recess.]

Mr. ANDERSON. The subcommittee will come to order.

Our next witnesses are the International Brotherhood of Teamsters, Jackie Presser, the general president, accompanied by Norman Weintraub, the chief economist, and Robert Baptiste, Mr. R.V. Durham, and Mary Ann Keeffe. And I assume a little later, you will identify yourselves for the record or, Mr. Presser, you may identify them.

I do have the prepared statement of Jackie Presser. I also have the prepared statement of Norman Weintraub. I have a bankruptcy proceeding list, that you people have submitted. I have a list of selected terminal closings since enactment of the Motor Carrier Act of 1980, and I have a fifth item here, the impact of economic change and regulatory reforms on the U.S. trucking industry.

All of this will be made a matter of record at this point.

[Statements referred to follow:]

TESTIMONY OF

JACKIE PRESSER

General President
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America

Before the

House Committee on Public Works and Transportation

October 25, 1983

Mr. Chairman, I am pleased to have the opportunity today to address this committee and share with you the recent experiences of our membership in the trucking industry as regards the Motor Carrier Act of 1980. As you well know, this Act became law after extensive hearings and consultation with representatives of industry, labor, the Interstate Commerce Commission, DOT and the Congress. The legislation achieved as a result of this process is the law that we in the Teamsters and our members have been living with for the past three years.

We are here today to tell you that while deregulation is touted as a major success by the Interstate Commerce Commission, the opposite has been true for the International Brotherhood of Teamsters and its affected members!

Deregulation, as we've told Congress before, has had disastrous consequences for our members in the regulated sector of the trucking industry. And it has brought incredibly bad times to a number of formerly stable motor carriers who face, instead of once profitable operations, bankruptcy and the prospect of continuing bad times.

I am not a lawyer, nor am I an economist or statistician. But as the new General President of the Teamsters, in office just six months, I have heard enough horror stories and tragic tales about deregulation from carriers and my own members alike to fill a book.

I have shared workers' concerns since long before deregulation was enacted! In the late seventies and early 1980, as a Teamster vice president, I helped lobby against practices that we could see even then would create a totally different operating environment, both for our members and the carriers which employ them.

As you ladies and gentlemen at this oversight hearing on deregulation meet, as mandated by law, to judge the merits of this legislation, some three years after its enactment, please keep in mind that I represent people, not numbers. For that reason, Mr. Chairman, I will talk in terms of pain and dislocation, not about statistics or statutes, although I have those, too, prepared by our expert staff of lawyers, economists and researchers at International headquarters and by the highly respected economic forecasting and consulting firm, Data Resources, Inc., which I know previously has prepared well regarded surveys for the Senate's use.

Continuing actions by the Interstate Commerce Commission have devastated the trucking industry. Through such policies as wide open entry; through overbroad grants of jurisdiction; through ignoring the common carrier obligation in the law to service the needs of small communities and small shippers; and through ignoring its mandate to minimize disruptions to the industry, the ICC has engaged in policies that clearly don't enable carriers to earn adequate profits to maintain a competitive stance or provide for fair working conditions and wages, as provided by the Act.

Representatives, we in the Teamsters are not naive. After three years of a deregulated environment, we know there is little to be gained by coming here today and asking to have deregulation removed. That's not very realistic at this point.

But three years ago, before the Motor Carrier Act was enacted, along with provisions that would protect the survival of the industry that employs so many Teamster members, we in the Teamsters also sought labor protective provisions to protect our members from widespread dislocations. We were told such legislation was unnecessary, since few dislocations would result.

In 1981, and again last year, in 1982, we reported on the results of surveys done by the Teamsters, documenting dislocations that had resulted. But no action was taken by Congress to protect our workers.

Today, in 1983, despite continual widespread unemployment, the Job Referral Bank called for in the original legislation has not been implemented, although we have actively participated in requesting rulemaking from the Department of Labor to establish such a system.

For that reason, we are here today seeking equity.

We have the third in a series of Layoff Surveys done by our chief economist, and it contains, in exhaustive detail, the facts as Teamsters have felt them. That survey shows that unemployment among our regulated trucking industry membership has increased to 32.5% of that membership on layoff status this year, up for the third year in a row since deregulation!

Our survey went even farther this year.

We learned, much to our dismay, that few of our laid-off members have found other employment within the jurisdictions of their local unions and that it is unlikely laid-off workers covered by this survey obtained other employment at all in establishments covered by our local unions' collective bargaining agreements.

What does this mean? To me, as a Teamster leader committed to providing for the needs of those 100,000 Teamsters sitting idle out there, it means a great deal. And I believe it means a great deal to us as a nation as well.

We have members across this country who've been out of work a long time, thanks to deregulation. The overwhelming percentage of these men and women have exhausted their unemployment benefits, and are having to rely on state and federal welfare doles for their food, health care, and dozens of other services, which means they are no longer contributing to the federal or state governments with their taxes, depriving both tiers of government of badly needed revenue bases.

When you consider that unemployment benefits are about a third of an average worker's income, you know that their losses are severe.

Sure, there's welfare, a part-time job if you're lucky, perhaps sending a spouse or child to work, and food stamps. But the problem is larger than this.

These people are professional truck drivers. Truck driving is likely their principal occupation, one not easily exchanged for another job. For those in related industries affected, like warehousing, the story's the same; these job skills are not interchangeable.

We're not talking about people looking for a free ride, but about workers committed to the work ethic; about people who've spent a lifetime providing the nation with goods and services in the fastest, most efficient, most economical way possible.

* We're talking about workers who've always been self-sustaining and independent, and whose jobs now have been legislated out of existence.

* We're talking about people who've spent a lifetime working to own a home who now find themselves scraping to pay mortgage payments, car loans, and bills for their children's educations.

* We're talking about workers who are now worrying about how to put food on the table.

Mr. Chairman, I know these people are suffering, because they have been calling on us for help. In my own home area, Ohio, where high unemployment has so severely strained the state economy these past two years, the Ohio Conference of Teamsters Service Bureau, which deals with more than one hundred thousand people, has been receiving a growing number of calls from desperate members. They tell us the same tragic stories.

We are getting calls from people who can't pay their light bills, can't afford to heat their homes, and are facing a family crisis. For many, this crisis is an eviction notice or mortgage foreclosure. The foreclosure rate on home loans in 1982's fourth quarter was the highest recorded during the past 30 years.

An alarming number of our members have tried to use unemployment benefits to make ends meet, only to find the investments of a lifetime going down the drain. They need help and have nowhere else to turn, but to us. We are there for them, and help them or direct them to people who can. But think of the cost in dignity to a man or woman who, until deregulation was enacted, was always able to stand alone, be self-sufficient, and a proud contributing member of the economy! Dignity is gone. All that is left is disgrace, degradation and an overpowering feeling of despair.

Let us consider the issue of health concerns to our unemployed. Teamsters covered by our National Master Freight Agreement in the trucking industry have some of the best health and welfare plans in the country, under dozens of group policies. But no plan can afford to cover people indefinitely without contributions being made. After a period of time, these laid-off workers lose their health and welfare coverage, unless they can find another job in the industry. And they can't in today's deregulated environment!

Buying individual insurance is usually too expensive. A laid-off Teamster driver could end up spending two-thirds of his unemployment payments to buy medical coverage comparable to his union plan. At the same time, as the federal government tries to cut back health programs, unemployed Teamsters are finding it difficult to qualify for Medicaid or Medicare. A real gray area is growing up, where a lot of people who can't afford to continue their medical insurance also find that they're ineligible for public assistance because they have assets such as a home or car.

What happens when your health insurance runs out, and you have a sick child? Where do you turn? Hospitals don't want to admit you, even to the emergency room! Doctors don't want to treat you if you can't pay. God forbid, you have a life-threatening crisis that requires immediate treatment, because then you're really taking your life in your hands!

What happens if your youngster has a chronic condition like asthma, goes into respiratory distress and needs treatment, or a youngster falls and breaks a leg, especially after the health benefits run out? The emergency room will turn him away, without insurance. A doctor will want proof of ability to pay before he'll treat the condition. Health authorities tell us that a broad range of increased emotional and physical ailments are reported in communities hard hit by layoffs and plant closings. Many mental health clinics and hospitals are linking the loss of jobs to increases in family disturbances, child abuse, alcoholism, behavioral disorders, and other stress-related ailments.

Workers are left trying to balance priorities. You can either pay the $200 to continue much-needed medical insurance or try to pay for food, rent, utilities and insurance. You have a lot of priorities and not enough money.

Loss of pensions has been another critical problem for our membership. There are numerous examples of members who have been thrown out of work, as a carrier went bankrupt, and have lost their pension protection. They're too young for Social Security, so what do they do? The answer is nothing, just wait.

These are the facts of life our unemployed members are facing every day. And for the breadwinners and divorced parents who are the sole support of their families among these unfortunates, they're especially scary facts to face.

Teamsters across the country have been trying to do their part. We've been setting up referral centers, like one in Eureka, California, and a Kalamazoo bank in Michigan that provides needed groceries. All these things are good, but that is not enough.

We in the Teamsters honestly believe that this legislative body has the courage and the compassion to help redress the damage wrought through deregulation for Teamsters members. We were told initially and every year since 1980 that if we could prove deregulation had harmed the people we represent, we could win redress for them. Frankly, that time is upon us.

Our in-house economic surveys for three years in a row have shown mounting job losses in the trucking industry, directly attributable to deregulation. One hundred thousand workers have been legislated out of their jobs, with virtually no protection or compensation!

This annual survey, which began in April, 1981 and a copy of which is being provided as part of our testimony today, shows that each year, the number of layoffs and the layoff rate have increased dramatically.

Our latest survey for April of 1983 shows that in our representative sampling of 36 local unions, some 28,394 over-the-road drivers and other terminal employees out of a total of 87,369 such workers with seniority rights under our National Master Freight Agreement were on layoff - a layoff rate of 32.5%.

From that sampling, the IBT's economists were able to estimate* that the layoff rate in the general freight trucking industry in April of 1983 was between 28.6% and 35.7%, and that between 86,000 and 107,000 of our members who were employed under the NMFA when the Motor Carrier Act of 1980 was enacted are now on layoff.

In other words, out of 300,000 drivers and other workers who were gainfully employed by general freight motor carriers in 1979-80 almost 100,000 or 1/3 of the total work force lost their jobs.

All regions of the country showed high levels of layoffs and increases in the layoff rates from April, 1982 to April, 1983, with the 1983 layoff rates ranging from a low of 26.3% in our Western Conference to a high of 35.4% in our Southern Conference.

Only 27.8% of the 36 local unions in our sample showed a decline in their layoff rates, while some 72.2% or about three-quarters of the locals experienced an increase in layoffs. In addition, of the 36 local unions in our April, 1983 survey, 27 or 75% reported a layoff rate of 25% or higher.

The most recent survey shows also that Teamster members in general freight trucking lost jobs either because motor carriers terminated operations or because they were laid-off from carriers still in business. Of the approximately 100,000 workers on layoff, the International Union estimates that some 30,000 lost their jobs permanently when their employers closed their businesses and about 70,000 are on layoff from motor carriers still in operation. The April, 1983 survey also showed a layoff rate of 23.5% for drivers and other terminal workers who are on the seniority lists of motor carriers who were still in business that month.

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* With a 95% confidence level.

For the first time this year, the Teamsters asked several local unions to furnish detailed information so that an effort could be made to determine the duration of layoffs. Teamster locals in St. Paul, Minnesota; Toledo, Ohio; Harrisburg, Pennsylvania; and Winston-Salem, North Carolina participated, and of the 1,973 over-the-road drivers and other terminal workers on layoff in April, 1983 in these local unions, we found that 26% had been on layoff for more than two years.

An analysis of the workers' dates of hire showed that 42% of the workers on layoff had 10 or more years of seniority with their employer. Only about 5% were hired after 1979. None of these workers were laid off by carriers that terminated operations between July 1, 1980 and April 1, 1983.

From three local unions that furnished data on carriers that terminated operations since the enactment of the Motor Carrier Act of 1980, it was determined that 72% of these drivers and other terminal workers who permanently lost their jobs were hired before 1973 - some 27% were hired before 1958.

We feel that the data furnished by these local unions is indicative of the true conditions existing in the general freight trucking industry.

Since the enactment of the Motor Carrier Act of 1980, layoffs have increased annually to the point that almost 100,000 workers or about 35% of the work force have lost their jobs. The layoffs are of long duration and not a short-term condition. A modest or even substantial overall recovery in the general economy will not undo the impact of the Motor Carrier Act of 1980, my economists tell me.

We want to again renew today our offer of full cooperation with any Federal Government study of layoffs and unemployment in the trucking industry.

This year also, in order to substantiate our claims of the damage that deregulation has caused for Teamsters, we took several additional steps to monitor the real impact of this legislation on a vital American industry.

Alarmed by the number of carrier bankruptcies there have been since deregulation was enacted, resulting in a high toll for our members as our survey shows, the Teamsters legal staff listed the on-going bankruptcy litigation in which we are representing our members.

That survey revealed that since the passage of the Motor Carrier Act of 1980, the Teamsters Union has been involved in twenty major Class I carrier bankruptcy cases, where the principal factor for the bankruptcy was the adverse impact of deregulation.

In some of these cases, the companies have been able to continue to operate under the protection of the Bankruptcy Court, but at a reduced level.

However, thirteen of these carriers were unable to continue to operate and were forced into liquidation, thereby destroying the jobs of more than 25,000 Teamster members.

And this figure does not include the employees of these companies who were unrepresented or were represented by another union!

In many of these cases, the company was forced to file bankruptcy and to ultimately liquidate even after our members had made wage concessions that ranged from ten percent up to thirty percent in basic wage rates.

These wage concessions were in addition to the concessions granted under our National Agreement during the 1982 negotiations.

In other cases, the companies never even bothered to file for bankruptcy, but merely closed their doors and conducted the liquidation themselves. Most of these cases involved medium and small-sized regional carriers that were literally driven out of business by the "big boys" of the industry.

Dealing with these liquidations and bankruptcies has proven to be one of the most frustrating experiences in the life of a representative of working people.

In these cases, we used our best efforts to assist these companies to survive by making concessions in wages, fringe benefits and work rule changes.

It is one of the most difficult things for a trade union leader to recommend giving back wages, fringe benefits and working conditions that you have fought to build up over the years. But even these painful efforts to reduce labor costs were not enough to save these companies.

The process then shifted to participating in the bankruptcy and liquidation process, in order to ensure that our members received their fair share of the cash value of the assets in order that the wage claims of our members and the claims of our trust funds were at least partially satisfied. However, in most of these cases, the assets of the company had been used as security for loans to keep the company in operation.

Therefore, our members ultimately received very little in the way of satisfaction of their unpaid wages and benefits in the liquidation process. Despite the efforts of our union and the sacrifices of our members to keep these companies in operation, the members lost their unpaid wages as well as their jobs.

Take just one case we were involved with as an example, that of the Akers Central litigation, one that involved more than 900 Teamsters, with seniority up to and exceeding 30 years, all of whom lost their jobs as the result of actions that were in effect condoned by the ICC.

This problem began in 1978 when the owner, Victor DeMaras, closed his union operation and shifted the work to a non-union operation. Subsequently, the union lodged litigation before the National Labor Relations Board, the courts and the ICC. The result was a settlement for some $1.6 million and an agreement that DeMaras would continue under the National Master Freight Agreement at least through 1985.

By March of 1982, the companies had paid some $1 million into the escrow account. From that time on, all payments ceased and the response of the union was to file a motion for contempt and to collect the entire amount immediately. The company's reaction was to go into bankruptcy in Miami, Florida in June of 1982.

All four companies were placed in bankruptcy, which included Akers of North Carolina, Akers of Delaware, Central Motor Lines and Transportation Investment Company (TIC). Two of those companies are in Chapter XI and two in Chapter VII.

During the course of this litigation, DeMaras was able to obtain 48 State Authority for Akers of North Carolina and another 48 State Authority for Central. Obviously, the ICC never considered the issue of "fitness."

DeMaras is still very active in the trucking industry because of his other manipulations. In 1978, he created Central Division of North Carolina. Apparently, this company has not been activated. In 1979, he created Central Division of Florida. This company is very much alive and is the company through which the money flows, which we estimate to be well in excess of $10 million a year. In 1981, Northern Freight Lines, which was a wholly owned subsidiary of Central, was changed to Central Division, Inc. of Georgia. The ICC not only approved the change, but then gave Central of Georgia 48 State Authority. This meant that DeMaras now had three companies with 48 State Authority and he is using Central of Florida to lease the rights from these three companies and to operate with some 200 drivers who most probably are owner-operators.

Recently, Judge McMillan agreed to add these three new corporations to his judgment entered in June of 1980. This may mean that these companies will have liability for the remaining $600,000, plus interest.

In open court before Judge McMillan when the above facts were revealed, the response of the ICC attorney was to request that the court permit the Commission to withdraw from the case.

The union strongly opposed that request and Judge McMillan has agreed and insists that the ICC remain in the case and become active.

The ICC attorney also advised the court that Central of Florida has now applied for brokerage rights to the ICC, which would permit that company to lease from any company and to charge the shippers and customers directly. In effect, it would mean that DeMaras and Central of Florida would not need the operating rights of Akers Central or Central of Georgia.

These contemptuous actions may not have occurred, the International Brotherhood of Teamsters feels, had the ICC thoroughly investigated the situation and considered the issue of "fitness". There was a time when the Bureau of Enforcement of the ICC would have been extremely active in this case and would have uncovered the fraud. The Commission now freely admits that it is no longer interested in pursuing such matters.

As representatives of the workers involved, we are encountering a bureaucracy intent on ignoring the "fitness, willingness and ability to serve" clauses of the law, determined to open entry to any and all comers, bent on giving the most far-flung grants of jurisdiction possible, regardless of whether they are sought or desired, and indifferent to the impact such grants of authority will have on other, established, shippers in the area already.

Mr. Chairman, we submit also that this problem grows daily, as the list of carriers driven into bankruptcy by the cutthroat competitive environment increases.

Consider, too, the impact of these closures on the communities and states in which they operated, along with the tax losses to both state and federal economies.

A survey done by our union listed some 43-IBT represented motor carriers of general freight who had terminated operations since July 1, 1980.

Consider just a few:

Spector Red Ball

Jones Motor Co.

Wilson Freight Co.

Johnson Motor Lines

Motor Freight Express

Gordon's Transport

Maislin Transport

Mid-American Lines

Tucker Freight Lines

IML

This listing clearly shows that many profitable carriers, employing thousands of workers, were knocked out of business by deregulation and a bad economy in tandem. None was a marginal or shoe-string operation, before deregulation was enacted. Afterward, each became a death-trap, rapidly heading toward self-destruction, taking Teamster workers' livelihoods with it as it expired.

We are also submitting for the record, Mr. Chairman, a survey prepared by our Research Department, on truck terminal closings since deregulation. This data was broken down by state and community, representing population centers of all sizes, and including locations from all geographical areas in the United States. In all, 14 states were surveyed.

The data for major cities shows Philadelphia with 97 terminals in service in the Spring of 1980 and 68 operating today. This represents a 30% net decrease in terminals operating for that city.

Four other cities among the major cities we surveyed show a double-digit net percentage decline and they include Boston, Mass.; Kansas City, Mo.; Pittsburgh, Pa.; and Cleveland, Ohio. Among large cities with populations between 125,000-250,000, Springfield, Mass., was the hardest hit, with only 30 terminals currently operating out of the 50 that were there in 1980. This represents a 40% decline.

And the smaller the population center, the more acute the problems seem to become. Superior, Wisconsin, which is in a population range between 25,000-50,000, has had a net decrease in terminals of 75%. Of the four terminals operating in 1980, only one remains. In the towns with populations of less than 25,000, it ranged in states we surveyed from 100% net decrease to 33%.

I believe, Mr. Chairman, that this data on terminal closings is significant. Obviously, a decline in the number of terminals servicing an area portends an accompanying decline in the number of terminal-oriented jobs for that area. It also shows that those communities have less service options available in terms of shipping, and thus, will be more at the prey of any still available shipper, who will be able to charge virtually anything he wants. If you're the only game in town, who will dispute your fees?

Lastly, Mr. Chairman, I'd like to introduce into testimony, one other study, one we commissioned from the prestigious Data Resources, Inc., one of the nation's foremost economic forecasting and consulting firms. Knowing that Congress sometimes disputes the surveys the union itself conducts, we asked DRI to conduct a survey assessing deregulation's impact on the industry, after first factoring out the effects of the general economic downturn.

We know that DRI (Data Resources, Inc.) is not an unknown acronym to members of this committee. I am very pleased, Mr. Chairman, to include in the record as a part of my testimony, a copy of that report recently prepared by DRI, titled "The Impact of Economic Change and Regulatory Reforms on the U.S. Trucking Industry."

This report looks at the importance of transportation to the U.S. economy; evaluates how the trucking industry performed under regulation; and assesses the impact of deregulation on the trucking industry, apart from the economic recession.

With charts and tables to support their findings, the report details how:

* Small towns and small shippers are facing much higher rate increases under deregulation than in the decades before;

* Smaller, less well financed motor carriers may not be able to provide the same level of service, not to mention a broader range and more sophisticated services needed by industries in the years ahead -- as the larger carriers they have displaced since 1980;

* An aging, over-the-road truck fleet may mean growing safety problems in the 1980s;

* The depressed economy accounts for only half of the decline in Class I and II motor carrier tonnage since 1980, implying that deregulation and related factors were significant contributors to their traffic losses.

These findings are no surprise to us, Mr. Chairman. Our economists and researchers, our freight division people and safety personnel, indeed the testimony of our union before the Congress since 1980, has been making these same observations.

I submit this study, Mr. Chairman, because it shows we are not a "lone voice crying out in the wilderness," but rather there are independent, respected economists and transportation analysts who share my concerns and the concerns of our union members about deregulation.

We believe that this committee, in its very important role of oversight on the Motor Carrier Act of 1980, needs to address a number of unanswered questions about the outcome of the decontrol process:

* Will the competitiveness of U.S. industry in world markets be hurt by the decline of the regulated motor carrier sector?

* How can smaller business and more rural communities effectively compete with larger entities if their shipping rates rise more rapidly than others in the 1980s?

* Will shippers be satisfied in the years ahead with a limited range of distribution services available from the smaller, newly authorized motor carriers?

* What are the public safety implications of smaller, often poorly financed carriers and an older truck fleet operating on the nation's highways?

In essence, Mr. Chairman, we believe that both Congress and the ICC need to get back to basics. The primary purpose of transportation regulation should focus on protection of shipper and community interests, as well as providing for an economically viable transportation system. Carriers have the right to know what the future regulatory environment will be to help them plan operations. Shippers need some assurances that carriers are competent to haul goods. The public needs to be protected from unsafe carrier operations. Issues of equity, public interest and public safety need to be reinstalled as pillars of regulatory faith.

# # #

THE IMPACT OF ECONOMIC CHANGE AND REGULATORY REFORMS ON THE U.S. TRUCKING INDUSTRY

A
Report
Prepared For The

International Brotherhood Of
Teamsters, Chauffeurs, Warehousemen,
and Helpers Of America

Washington, DC

By

Data Resources, Inc.
Transportation and Logistics Service

October 1983

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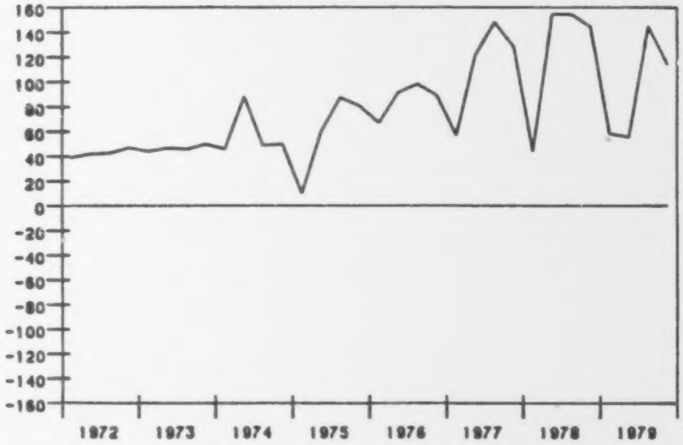
IMPLICATIONS

Chart 5

Class I and II Large Motor Carriers
Net Income
(Millions of dollars)



Source: Data Resources, Inc. Interstate Commerce Commission. Quarterly Rates.

What Impact Has Deregulation Had On The U.S. Trucking Industry?

For the last ten years, the fight over transportation decontrol has taken place in Congress, but the initiative for reform originated in the shipping community. A number of factors contributed to shipper demands for less regulated carriers. First, shippers claimed that rapidly rising transportation rates, especially in the late 1970s, were making their products less competitive in both domestic and world markets. Second, many companies had made substantial investments in private truck fleets, so that over 65% of total truck tonnage is shipped by corporate carriers. Such fleets represent a major investment for companies, and faced with a slow growth, low earnings period during the 1980s, shippers actively lobbied their Congresspersons to legislate free-market transportation alternatives. Finally, shippers felt they needed the flexibility to negotiate various service levels with carriers to help them redesign logistics networks to meet more aggressive competition over the next few years.

By freeing entry and decontrolling carrier operations and rates, many shippers believe that they will be able to significantly reduce their investment in private truck and railcar fleets, lower delivered product costs by negotiating better transportation rates, and improve service to customers using higher quality carrier offerings.

But will these promises come true? If economic growth and product competitiveness depends on the availability of effective transportation systems, are we now in the process of dismembering the carriers that contributed to the growth of the economy in past decades?

Issue: Can Non-Regulated Carriers Provide The Same Level and Types Of Service As Regulated Carriers?

As Table 8 and Charts 6 and 7 indicate, regulated motor carriers and railroads have lost substantial amounts of tonnage to both private and exempt truckers. Although these alternative carriers presently represent distribution cost savings for shippers, questions exist as to whether new carriers or corporate fleets will be able to provide the range of more sophisticated transportation services needed by U.S. industries in the 1980s.

Table 8

"Regulated Carriers Have Lost Traffic
To Exempt/Private Carriers"

Modal Traffic Shifts Since Deregulation
(Millions of tons originated)

	1980	1981	1982	1983*	Annual % Change 1980-1983
Class I Rail	1,490	1,452	1,260	1,270	-5.2
% Share	28	27	26	25	
Coal	522	530	523	500	-1.4
% Share Of Rail	35	37	42	39	
Non-Coal	931	883	696	726	-8.0
% Share Of Rail	62	61	55	57	
Piggyback	38	39	42	44	+5.0
% Share Of Rail	3	3	3	3	
Motor Carriers	1,919	1,961	1,822	1,988	+1.2
% Share	36	37	37	38	
Regulated	562	553	509	524	-2.3
% Share Of Truck	29	28	28	26	
Exempt/Contract	121	129	137	159	+9.5
% Share Of Truck	6	7	8	8	
Private	1,236	1,280	1,175	1,305	+1.8
% Share Of Truck	64	65	65	66	
Other Modes	1,911	1,877	1,797	1,859	-1.0
Total, All Modes	5,320	5,290	4,879	5,117	-1.3

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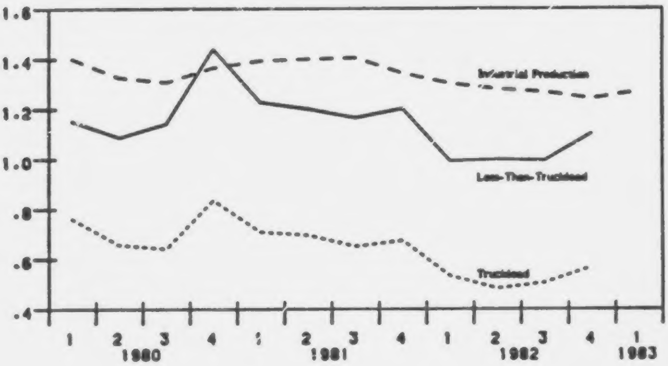
*Estimated.
Source: Data Resources, Inc.

Chart 6

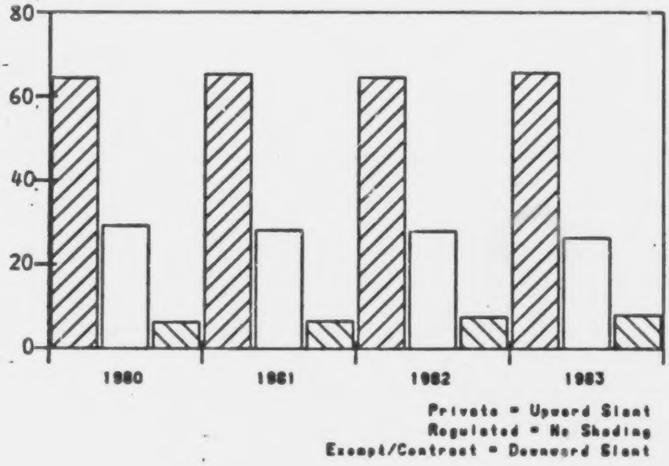
Class I and II Regulated Motor Carriers LTL and TL Tonnage Indices Compared To Industrial Production Growth (1970 = 1.00)



Source: Data Resources, Inc.

Chart 7

Motor Carrier Traffic Shares By Carrier Type (Percent)



Source: Data Resources, Inc.

Issue: Regulated Motor Carrier Rate Increases Have Not Kept Pace With Inflation Since 1980.

Table 9 reveals that while overall U.S. price levels advanced 20% from 1980 to 1983, regulated motor carrier rate LTL/TL increases were on average, 20% or less. While a boom to shippers, the decline in revenue generation by regulated carriers may hurt their ability to provide needed freight services as the economy resumes.

Table 9
Nationwide Modal Rate Increase
Since Deregulation

	% Increase* 1980-1983
Producer Price Index	20%
Rail Carrier Rates:	
Total	+25%
Piggyback	-7%
Class I and II Motor Carriers**:	
Less Than Truckload	+20%
Truckload	-5%

---

*First Quarter 1980 through fourth quarter 1983.
**Estimated.

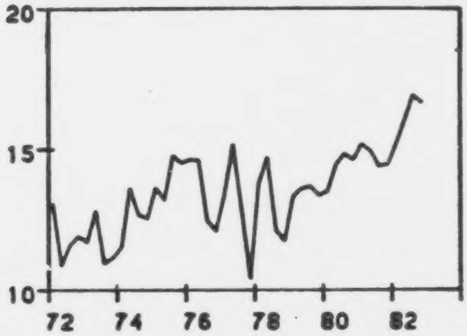
Source: Data Resources, Inc.

Issue: More than 10,000 Newly Authorized Motor Carriers Are Competing For Freight In 1983 Than In 1980.

In the midst of one of the worst recessions in the U.S. postwar period, the ICC has allowed substantial entry into the motor carrier industry. One result has been record levels of carriers filing for bankruptcy in 1982 and 1983. In addition, Chart 8 indicates that the share of self-employed drivers has increased to nearly 18% of the truck industry workforce, up from 13% in 1980. No one can guarantee that the new carriers are better providers of freight transportation services than the ones being put out of business.

Chart 8

"Rapid Increase In Exempt and Smaller Class III Motor Carriers Since Deregulation"
(%)



Source: Bureau of Labor Statistics. Unpublished data.

Issue: Small Shipper and Small Town Motor Carrier Rates Have Risen Faster Than Inflation Since 1980.

Table 10 shows that small shipment and small town rate increases by regulated motor carriers have substantially exceeded inflation since deregulation. Although substitute services may be available, the basic implication is that smaller businesses and more rural communities may have a more difficult time competing with larger entities in the 1980s.

Issue: Regulated Large Carrier Revenues and Earnings Have Steadily Declined Since 1980.

Deregulation and a weakened economy have produced a significant fall in regulated carrier revenues and income. In addition to resulting in the unemployment of hundreds of thousands of drivers, clerks, terminal, and other workers, the fall-off has endangered the ability of regulated motor carriers to respond to the more complex shipping needs of the 1980s. Again, whether the newly authorized motor carriers can meet the challenges has yet to be determined. Charts 9 and 10 detail carrier revenues and income since 1980.

Table 10

"Small Shipper/Small Town Rates Escalating Faster Than Inflation"

	% Increase* 1980-1983
Producer Price Index	20%
Small Shipment Rates (Under 500 lbs.)	33%
Small Town Rates (Under 10,000 people**)	30%

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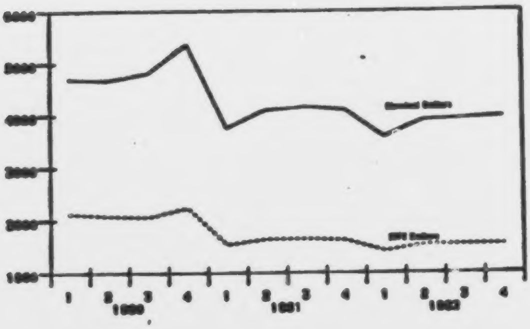
*First quarter 1980 through fourth quarter 1983.
**Estimates based on DRI survey Data.

Source: Data Resources, Inc., Nationwide Averages.

Chart 9

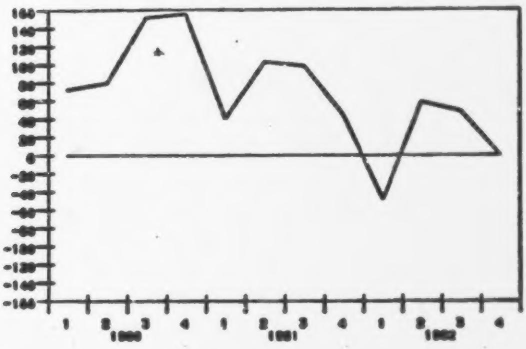
Class I and II Large Motor Carriers Total Revenue (Millions of dollars)



Source: Data Resources, Inc. Interstate Commerce Commission Data. Quarterly rates.

Chart 10

Class I and II Large Motor Carriers
Net Income
(Millions of dollars)



Source: Data Resources, Inc. Interstate
Commerce Commission. Quarterly rates.

Issue: An Aging Over-The-Road Truck Fleet [redacted] May Mean Growing Highway Safety Problems In The Mid 1980s.

As Table 11 shows, depressed carrier earnings after 1980 and the tendency of the newly authorized motor carriers to buy used vehicles has resulted in a substantial aging of the U.S. truck fleet. Older vehicles generally experience greater-than-average repair problems implying that the potential for equipment failure-related accidents over the next few years may increase. Although current evidence does not indicate that a substantial rise in truck accidents has yet occurred, the likelihood of a growing accident incidence means closer vehicle monitoring may be necessary to protect the public.

Table 11

"U.S. Truck Fleet Is Aging Since Deregulation

	% Increase 1980-1983
U.S. Medium and Heavy Duty Truck Fleet	
0 To 4 Years Old	-43%
5 To 9 Years Old	+10%
10 Years and Over	+40%

Source: Data Resources, Inc., Truck Sales Model.

Issue: Unemployment Among Trucking Industry Workers Has Substantially Increased Since Deregulation.

As Table 12 indicates, the historic relationship between overall civilian unemployment and transport equipment operations (primarily truckers and warehousemen) has changed in the post-deregulation era. In comparison in [redacted] the 1970s when transport operative unemployment was below civilian worker rates, unemployment among transport workers since decontrol [redacted] has risen to levels averaging 23% higher than for all workers. During the last quarter of 1982, the unemployment rate among transport workers reached 13.1%, compared to 10.5% among all workers.

Table 12

Civilian Unemployment Rates
(%)

	Pre Deregulation (Average) 1972-1979	Post Deregulation (Average) 1980-1982
Civilian Workers	6.3	8.0
Transport Equipment Operatives (Including Truckers)	5.9	9.8

Source: Data Resources, Inc. U.S. Central Data Base.

Can We Separate The Effects Of Regulatory Reform and Economic Recession On The Regulated Trucking Industry?

While no methodology exists that can completely isolate the effects of transportation decontrol and declining production on regulated motor carrier traffic since 1980, it is possible to construct adequate estimates of the relative impacts. Data Resources used its models of modal traffic to assess the level of regulated truck tonnage loss due to deregulation. The analysis accounted for differences in production, inventories, and modal competition across the two recessions (1975 and 1981-1982). Basically, the models predicted what traffic losses would have been since 1980 without deregulation and compared these to actual traffic losses by regulated carriers.

Table 13 summarizes the results from the analysis. For Class I and II regulated general freight carriers, tonnage fell by 30% in the period since deregulation and declining production began in late 1979. While 16% of that decline can be attributed to economic conditions, a full 14% of the tonnage lost was due to new carrier entry or rights liberalization under decontrol and related factors. For Class I and II specialized carriers, the loss was less dramatic, with 11% of the tonnage decline experienced in the early 1980s caused by deregulation. In both cases, nearly half of the tonnage declines can be attributed to the impacts of deregulation and related factors on Class I and II regulated motor carriers.

What factors in addition to deregulation could have caused such a dramatic fall in Class I and II motor carrier tonnage? As stated earlier, the DRI models accounted for the depressed economy, changing inventory policies and shifting world trade patterns. The unexplained 14% of the tonnage decline since 1980 is due in part to the following reasons:

- New Motor Carrier entry: over 10,000 new truckers were competing for reduced traffic levels

- Aggressive railroad competition; rail TOFC loadings - a substitute for long-haul truck flows - grew steadily in the early 1980s

- Changing industry distribution patterns: companies found less shipment-intensive ways of moving products

- Intercorporate hauling: private carriers can now move freight formerly hauled by Class I & II carriers

Clearly, deregulation is not the only factor behind the Class I and II tonnage falloff since 1980, but all qualitative evidence from carriers points to it as the major cause. No quantitative test can fully differentiate between the impacts of deregulation and other noneconomic factors on truck traffic changes since 1980. More research would be necessary to establish a causal link between deregulation-related factors and truck traffic losses by regulated carriers over the last few years. The above analysis serves only to identify that tonnage lost since 1980 by regulated carriers is not due to purely economic conditions and that deregulation may be a major factor behind the additional traffic decline.

Implications

Our analysis of the impact of the economy and regulatory reforms on the U.S. regulated motor carrier industry has raised a number of unanswered questions about the outcome of the decontrol process:

- Will the competitiveness of U.S. industry in world markets be hurt by the decline of the regulated motor carrier sector?

- How can smaller business and more rural communities effectively compete with larger entities if their shipping rates rise more rapidly than others in the 1980s?

- Will shippers be satisfied with the range of distribution services available from the smaller, newly authorized motor carriers?

- What are the public safety implications of smaller, often poorly financed carriers and or older truck fleet operating on the nation's highways?

- Does Congress and the ICC really understand the process of deregulation and its likely outcome?

Table 13

Comparison Of Class I and II
Regulated Truck Tonnage Recession Losses
Before and After Deregulation

	(Peak To Trough Declines, %)	
	Quarters	
	1974:3-1975:1	1979:3-1982:4
U.S. Industrial Production Index	-19%	-12%
Class I and II General Freight Carrier Tonnage*	-26%	-30%
Tonnage Loss Due To Deregulation**	-	-14%
Class I and II Specialized Freight Carrier Tonnage***	-16%	-25%
Tonnage Loss Due To Deregulation**	-	-11%

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*Based on Regular Route Common Carrier Conference data.
**Estimate based on traffic loss in the last recession.
***Interstate Commerce Commission data.

Source: Data Resources, Inc., Modal Traffic Models.

Executive Summary

Our analysis of regulated motor carrier industry before and after deregulation has yielded the following key findings:

- Freight transportation, especially motor carriers, will help U.S. industry more effectively compete in the world markets during the 1980s
- The motor carrier industry was an important contributor to the strong economic growth in the United States over the last two decades
- Almost 75% of freight transportation outlays are spent on motor carrier services in the United States
- Regulated motor carrier rate growth has not been faster than overall inflation in the 1970s
- Small towns and small shippers are facing much higher rate increases under deregulation than in the 1970s
- Smaller, less well financed motor carriers may not be able to provide the same level of service as the larger carriers they have displaced since 1980
- An aging, over-the-road truck fleet may mean growing highway safety problems in the 1980s
- The depressed economy accounts for only half of the decline in Class I and II motor carrier tonnage since 1980, implying that deregulation and related factors were significant contributors to their traffic losses
- Congress needs to study the process of transportation deregulation and establish a better understanding of what effect decontrol is having on carriers and shippers

How Important Is Transportation To The U.S. Economy?

With the most geographically diverse and complex production system in the world, the United States is heavily dependent on the smooth working of our domestic transportation system. As world markets become more competitive in the 1980s, shippers need efficient freight carriers that can hold down product cost increases through improved distribution services. In essence, freight transportation has and will increasingly be an important competitive tool that helps keep our economy strong.

Issue: Freight Transportation Expenditures Will Remain An Important Share Of Gross National Product.

As Table 1 indicates, the United States historically has spent between 8% and 10% of Gross National Product on freight transportation. As the nation's output grew, transportation provided the key linkages between suppliers, producers, and markets. As companies strive to be more competitive, they are seeking innovative ways of using transportation to reach broader markets and lower product costs.

Issue: Freight Transportation Is An Important Component Of The Production Process For Major U.S. Industries.

Industries that form the cornerstone of our economic system -- foods, construction, metals, and chemicals spend, on average, 9% of each final sales dollar on freight transportation. As Table 2 indicates, distribution costs range from 1% of sales (tobacco) to almost 10% (foods). Superior U.S. transportation systems have helped make these companies world leaders over the past two decades.

Issue: Motor Carriers Have Become The Preferred Mode For Most Freight Shippers.

Table 3 indicates that since 1960 trucks have made impressive level and share gains in intercity freight haulage. Whereas 1982 rail traffic levels are essentially the same as in 1960, total truck tonnage has grown by over 640 million tons. Similarly, Table 4 shows that shippers have been willing to spend an increasing share of freight transportation outlays on motor carrier services. In the early 1980s, over 70% of total freight expenditures in the United States were for truck transportation.

Table 1

"Over $250 Billion Per Year (8% Of GNP) Is Spent Moving Freight Around The United States"

U.S. Transportation Expenditures
Relative To Gross National Product
(Billions of dollars)

	1960	1970	1975	1980	1982
Freight Transportation Expenditures	46.8	83.3	115.5	211.4	261.2
Passenger Transportation Expenditures	60.5	114.3	186.7	340.8	371.8
Less Duplication	1.7	3.1	5.1	9.0	10.6
Total Transportation Expenditures	105.6	195.0	297.1	543.2	622.4
Gross National Product	506.5	992.7	1549.2	2633.1	3073.0
Total Transportation Expenditures As A % Of GNP	20.9%	19.7%	19.2%	20.6%	20.3%
Freight Expenditures As A % Of GNP	9.3%	8.4%	7.5%	8.0%	8.5%

Source: Data Resources, Inc., Transportation Association of America.

Table 2

How Much Does A Typical Billion Dollar Company Spend Each Year On Distribution? (Millions of dollars)

	$	% Of Sales (Average)
Over 100 Million Dollars		
Food and Kindred Products	51-147	10
Construction	79-124	10
Primary Metals	70-105	9
Textiles/Apparel	80-100	9
Chemicals	32-101	8
75 To 100 Million Dollars		
Paper and Allied Products	83-94	8
Stone, Clay and Glass	64-87	7
Furniture	75-84	7
Petroleum Refining	62-75	7
Transportation Equipment	53-75	6
Fabricated Metals Products	48-83	6
50 To 75 Million Dollars		
Lumber and Wood	56-70	6
Rubber and Plastic	64-69	6
Miscellaneous Manufacturers	41-70	5
Printing and Publishing	50-68	5
Machinery, excluding Electrical	44-58	5
Leather	47-52	5
Under 50 Million Dollars		
Mining	45-48	4
Electrical Machinery	32-49	4
Instruments	33-41	3
Agriculture	34-41	3
Ordnance	20-42	3
Tobacco	9-12	1

Source: Data Resources, Inc., Transportation Service Data.

Table 3

"Total Truck Tonnage Has Risen 54% Since 1960
While Rail Traffic Has Remained Essentially Constant"

Intercity Tonnage Hauled By Mode
(Millions of tons)

	1960	1970	1975	1980	1982
Class I and II Rail	1,301	1,572	1,471	1,589	1,361
%	36	31	30	29	27
Truck	1,181	1,828	1,744	1,919	1,822
%	32	36	35	35	37
Pipeline	468	790	879	921	884
%	13	16	18	17	18
Water	655	867	865	986	908
%	18	17	17	18	18
Air	-	3	3	5	5
%	-	-	-	-	-
Total	3,606	5,060	4,962	5,420	4,980

Source: Data Resources, Inc., Interstate Commerce Commission.

Table 4

"Companies Have Spent An Increasing Share Of Shipping Dollars On Truck Transportation Over The Last Two Decades"

Modal Transportation Outlays
(Millions of dollars)

	1960	1970	1975	1980	1982
Truck	31,456	62,372	84,687	147,685	162,332
%	67	74	73	72	73
Rail	9,028	11,869	16,509	27,702	27,106
%	19	14	14	14	13
Other Modes	6,343	9,589	14,310	28,537	32,934
%	14	11	12	14	15
Total	46,827	83,830	115,056	203,924	222,372

Source: Data Resources, Inc., Transportation Association of America.

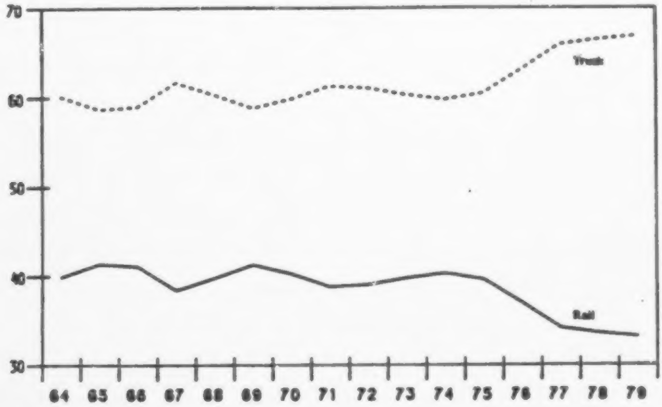
How Did The U.S. Trucking Industry Perform Under Regulation?

Both the U.S. economy and transportation industry enjoyed a period of unprecedented growth over the past two decades. Real Gross National Product more than doubled in the 1960 to 1979 period, as did the ton-miles of freight hauled in the United States.

For trucking, these were years of very rapid growth, due to the expansion of the interstate highway system and because shippers often choose the more flexible and often less expensive motor carrier service over rails. Chart 1 shows that in increasing share of intercity manufactured product shipments shifted from railroads to motor carriers since 1975. Within the motor carrier sector, Chart 2 reveals that regulated carriers grew as a share of total truck activity.

Chart 1

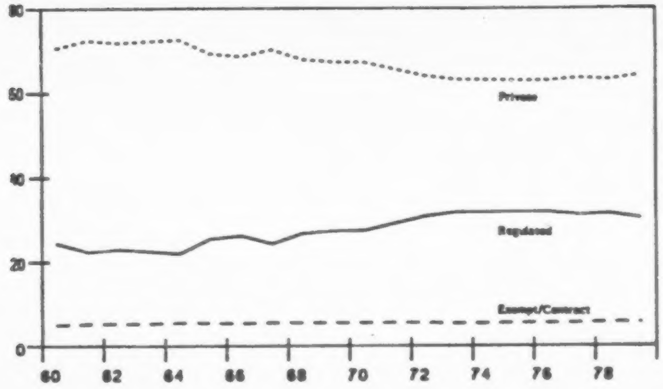
Rail versus Truck
Modal Share Of Manufactured Product Traffic
(Percent)



Source: Data Resources, Inc. Transportation Data Base.

Chart 2

Motor Carrier Traffic Shares
By Carrier Type
(Percent)



Source: Data Resources, Inc. Transportation Data Base.

Issue: Regulated Motor Carriers Were Key Contributors To The Rapid Growth Of Industry Output Since 1960.

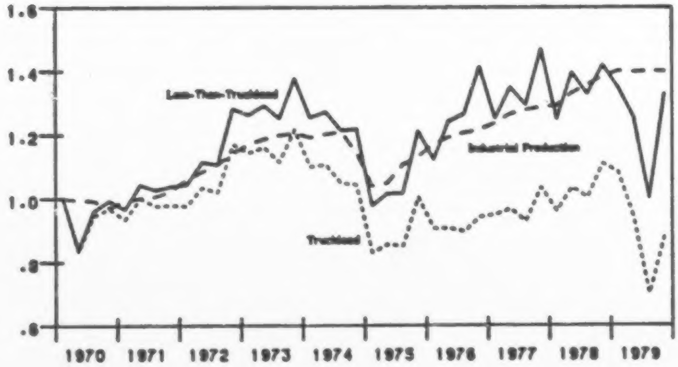
Although regulated trucking did not cause the rapid economic growth of the last two decades, the availability of a wide spectrum of carrier services certainly contributed to the expansion. Chart 3 indicates that regulated less-than-truckload traffic grew at rates equal to or above industrial production growth since 1960. The implication is that shippers increasingly chose regulated motor carriers to move their goods over the past two decades.

Issue: Regulated Motor Carrier Rate Increases Have Not Been Out Of Line With Inflation or Truck Operating Cost Increases Since 1960.

Table 4 compares regulated truck rate trends in the 1970s with both intercity truck operating cost increases and the producer price index (a measure of U.S. inflation across industries). Overall, regulated motor carrier prices grew at rates similar to inflation and below estimated truck operating costs. Increased carrier productivity (e.g., larger payloads, more efficient terminal operations) helped keep truck rate growth below cost inflation.

Chart 3

Class I and II Regulated Motor Carriers
LTL and TL Tonnage Indices
Compared To Industrial Production Growth
(1970 = 1.00)



Source: Data Resources, Inc. Transportation Data Base.

Table 4

"Motor Carrier Rate Growth In 1970s Was Below Operating Cost Increases and In-Line With Inflation"

Historical Trends
Middle Atlantic Truck Rates
versus Price Indexes
(1970 = 1.00)

	1971	1973	1975	1977	1980	Annual % Change 1971-1980
Intercity Truck Operating Costs	1.07	1.28	1.86	2.18	3.76	15.0
Producer Price Index	1.04	1.26	1.61	1.77	2.51	10.3
Middle Atlantic Rate Bureau Class Rates						
A&A*	1.09	1.23	1.46	1.72	2.40	9.2
Minimum Charges	1.15	1.41	1.86	2.21	3.08	11.6
Truckload	1.09	1.19	1.39	1.58	2.33	8.8
Less Than 500 lbs.	1.13	1.36	1.74	2.05	2.86	10.9
Commodity Rates						
A&A*	1.06	1.20	1.42	1.67	2.33	9.2
Minimum Charges	1.12	1.37	1.82	2.15	3.00	11.6
Truckload	1.06	1.16	1.35	1.54	2.27	8.8
Less Than 500 lbs.	1.11	1.32	1.69	1.99	2.78	10.7

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*Accessorials and Arbitraries.

Source: Data Resources, Inc., Motor Carrier Rate Data Base.

Issue: Regulated Motor Carriers Have Become More Efficient Producers Of Transportation Services Since 1960.

Due to changing regulations and competition from other modes, Table 5 shows that carriers have increased productivity (measured as output per employee) over the past two decade. Although productivity gains in trucking were slower than in the basically non-regulated U.S. economy, they are impressive for an industry that had little regulatory incentive to improve operating efficiency.

Table 5

"Motor Carrier Productivity Index Trends Since 1960"
(1960 = 1.00)

	1960	1970	1975	1980	1982	Annual % Change 1960-1982
Truck Ton-Miles Per Employee	1.00	1.12	1.23	1.25	1.26	+1.1
Output Per Man Hour United States	1.00	1.28	1.42	1.45	1.48	+1.8

Source: Data Resources, Inc.

Issue: Increases In Truck Transportation Expenditures Were In-Line With Overall Spending Growth In The Economy Since 1960.

Table 6 details how increases in expenditures for freight transportation did not exceed overall spending on goods and services in the 1960 to 1982 period. The implication is that regulation of rail or truck did not result in excess or less than adequate increases in shipping costs, relative to total expenditure growth in the United States.

Table 6

"Freight Transportation Costs Have Grown
More Slowly Than GNP Since 1960"

	% Increase 1960-1982
Total Freight Expenditures	455%
Truck Expenditures	504%
Gross National Product	506%

Source: Data Resources, Inc.

Issue: Small Towns and Shippers Were Not Penalized By Excessive Rate Growth On The Part Of Regulated Motor Carriers In The 1970s.

As Table 7 shows, estimated increases in small shipment and small town rates were quite close to growth in overall inflation. Such rate structures encouraged both the growth of small businesses and rural development during the last decade.

Table 7

"Motor Carrier Rates
For Small Shippers and Towns
Matched Overall Inflation In The 1970s"

	% Increase* 1970-1980
U.S. Inflation	156%
Small Shipment Rates (Under 500 lbs.)	150%
Small Town Rates (Under 10,000 people)	143%

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*First quarter 1970 to fourth quarter 1980.

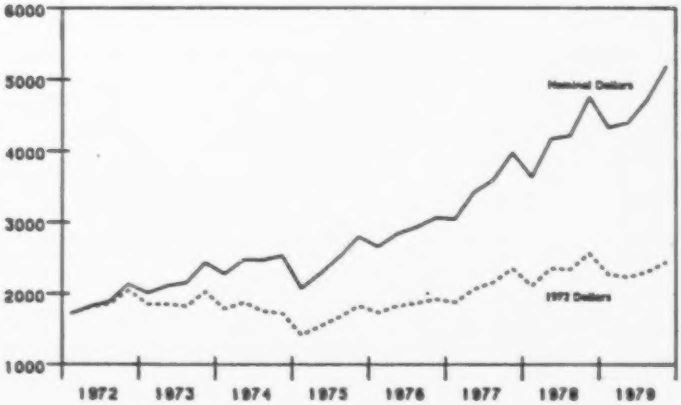
Source: Data Resources, Inc., Nationwide Averages. Motor Rate Data Base.

Issues: Regulated Motor Carriers Have Been A Growing, Stable and Profitable Industry Since 1960.

Charts 4 and 5 indicated the steady growth in both revenues and operating income for large Class I and II motor carriers over the past decade. These companies and others regulated carriers provided over 500,000 jobs for the U.S. economy. Total employment in the trucking sector, including private fleets and warehouse/dock workers exceeded 1 million people in the late 1970s.

Chart 4

Class I and II Large Motor Carriers
Total Revenue
(Millions of dollars)



Source: Data Resources, Inc. Interstate Commerce Commission Data. Quarterly rates.

In essence, both Congress and the ICC need to get back to the basics. The primary purpose of transportation regulation should focus on protection of shipper and community interests. Issues of equity, public interest, and public safety need to be reinstalled as pillars of regulatory faith. Carriers have the right to know what the future regulatory environment will be to help them plan operations. Shippers need some assurances that carrier are minimally competent to haul goods. The public needs to be protected from unsafe carrier operations.

Data Sources: Over the last seven years Data Resources had developed a detailed set of data bases designed to measure U.S. transportation activity by mode. Often both a compendium of existing sources and a collection of newly surveyed information, the data base contains consistent, cross-modal measures of traffic, revenues, and operations by carrier type. The data base was extensively used in developing the information presented in this paper. Additional data sources include the Interstate Commerce Commission, the Transportation Association Of America, and the Regular Common Carrier Conference Of The American Trucking Association.

A Final Word: The purpose of the above analysis has not been to "prove" unequivocally that transportation deregulation has been bad, only that noone as yet understands the full impact of the reforms on carrier operations. Congress needs to commission a study of deregulation impacts that is coordinated by unbiased agencies rather than those who continue to advocate further regulatory reforms. Decisions that affect nearly 10% of our nation's economy deserve better monitoring and study than previously afforded transportation decontrol.

SELECTED TERMINAL CLOSINGS SINCE ENACTMENT OF THE MOTOR CARRIER ACT OF 1980

Prepared by: Research Department
International Brotherhood of Teamsters

September, 1983

SELECTED TERMINAL CLOSINGS SINCE ENACTMENT OF THE MOTOR CARRIER ACT OF 1980

Using the American Motor Carrier Directory, which lists carriers offering less than truckload (LTL) terminal service, researchers compiled data for terminal closings from the spring of 1980 to the present. This data is broken down by population size. The areas surveyed represent population centers of all sizes (major cities, large cities, medium-size cities, small cities, and towns) and includes locations from all geographical areas in the United States (Pacific, Mid-West, Northeast, South, etc.). In all, the survey included communities from 14 states.

The areas chosen for study do not constitute a random sampling: their inclusion in the survey is purely judgemental on the part of the researchers. As a result, this study is simply an overview of particular communities that have experienced declines in terminal operations since the onset of deregulation.

It is our belief that the high number of terminal closings in the communities listed within reflect a loss of service options, particularly in small communities, for shippers in these areas. Moreover, a decline in the number of terminals servicing a community portends an accompanying decline in the number of terminal-oriented jobs for that area.

TERMINAL CLOSINGS BY STATE - SPRING 1980 TO FALL 1983

	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
ALABAMA						
Tuscumbia	1	2	50%	2	1	50%
ALASKA						
Anchorage	3	11	27%	10	8	20%
Fairbanks	3	8	38%	8	5	38%
Prudhoe Bay	1	2	50%	2	1	50%
ARIZONA						
Tuscon	6	20	30%	15	14	7%
KENTUCKY						
Louisville	27	97	28%	73	70	4%
Corbin	2	4	50%	3	2	33%
LOUISIANA						
Winnfield	1	1	100%	1	0	100%
MASSACHUSETTS						
Boston	42	100	42%	82	58	29%
Springfield	1	5	20%	5	4	20%
Fall River	2	8	25%	7	6	14%
Great Barrington	1	1	100%	1	0	100%

	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
MICHIGAN						
Detroit	22	84	26%	67	62	7%
Grand Rapids	14	47	30%	35	33	6%
Flint	9	31	29%	25	22	12%
Muskegon	15	24	63%	13	9	31%
MISSOURI						
St. Louis	43	139	31%	103	96	7%
Kansas City	27	80	31%	64	53	17%
Mexico	2	3	67%	2	1	50%
NEBRASKA						
Omaha	21	80	26%	62	59	5%
Lincoln	15	38	40%	29	23	21%
Chadron	1	2	50%	2	1	50%
OHIO						
Akron	22	56	39%	48	34	29%
Canton	8	24	33%	19	16	16%
Cincinnati	31	107	29%	79	76	4%
Cleveland	32	101	32%	78	69	12%
Dayton	28	76	37%	53	48	9%
Springfield	1	5	20%	5	4	20%
Toledo	24	86	28%	62	60	3%
Youngstown	8	31	26%	26	23	12%
OREGON						
Salem	7	18	39%	13	11	15%

	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
PENNSYLVANIA						
Philadelphia	48	116	41%	97	68	30%
Pittsburgh	30	85	35%	64	55	14%
Erie	14	30	47%	25	16	36%
Wilks Barre	8	21	38%	14	13	7%
VIRGINIA						
Richmond	18	52	35%	40	34	15%
Roanoke	10	31	32%	24	21	13%
WISCONSIN						
Milwaukee	27	83	33%	57	56	2%
Superior	3	4	75%	4	1	75%
Wisconsin Rapids	1	3	33%	3	2	33%

TERMINAL CLOSINGS BY POPULATION - SPRING 1980 TO FALL 1983

Major Cities (pop. - 250,000+)	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
Philadelphia, PA	48	116	41%	97	68	30%
Boston, MA	42	100	42%	82	58	29%
Kansas City, MO	27	80	31%	64	53	17%
Pittsburgh, PA	30	85	35%	64	55	14%
Cleveland, OH	32	101	32%	78	69	12%
Detroit, MI	22	84	26%	67	62	7%
St. Louis, MO	43	139	31%	103	96	7%
Tuscon, AZ	6	20	30%	15	14	7%
Omaha, NB	21	80	26%	62	59	5%
Cincinnati, OH	31	107	29%	79	76	4%
Louisville, KY	27	97	28%	73	70	4%
Toledo, OH	24	86	28%	62	60	3%
Milwaukee, WI	27	83	33%	57	56	2%

Large Cities (pop. 125,000 - 249,999)	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
Springfield, MA	25	55	46%	50	30	40%
Akron, OH	22	56	39%	48	34	29%
Lincoln, NB	15	38	40%	29	23	21%
Achorage, AK	3	11	27%	10	8	20%
Richmond, VA	18	52	35%	40	34	15%
Flint, MI	9	31	29%	25	22	12%
Dayton, OH	28	76	37%	53	48	9%
Grand Rapids, MI	14	47	30%	35	33	6%

Medium-Size Cities (pop. 55,000 - 124,999)	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
Erie, PA	14	30	47%	25	16	36%
Springfield, OH	1	5	20%	5	4	20%
Canton, OH	8	24	33%	19	16	16%
Salem, OR	7	18	39%	13	11	15%
Fall River, MA	2	8	25%	7	6	14%
Roanoke, VA	10	31	32%	24	21	13%
Youngstown, OH	8	31	26%	26	23	12%

Small Cities (pop. 25,000 - 54,999)	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
Superior, WI	3	4	75%	4	1	75%
Muskegon, MI	15	24	63%	13	9	31%
Wilks-Barre, PA	8	21	38%	14	13	7%

Towns - (pop. less than 24,999)	Number of terminals closing from Spring 1980 to Fall 1983	Total number of terminals operating from Spring 1980 to Fall 1983	Percentage of total closing	Number of terminals operating in Spring of 1980	Number of terminals operating in Fall of 1983	Net percentage decrease in number of terminals
Great Barrington, MA	1	1	100%	1	0	100%
Winnfield, LA	1	1	100%	1	0	100%
Chadron, NB	1	2	50%	2	1	50%
Mexico, MO	2	3	67%	2	1	50%
Pudhoe Bay, AK	1	2	50%	2	1	50%
Tuscumbia, AL	1	2	50%	2	1	50%
Fairbanks, AK	3	8	38%	8	5	38%
Corbin, KY	2	4	50%	3	2	33%
Wisconsin Rapids, WI	1	3	33%	3	2	33%

BANKRUPTCY PROCEEDINGS OF CLASS I CARRIERS
SINCE PASSAGE OF MOTOR CARRIER ACT OF 1980

Date of Bankruptcy	Company	Status
5/18/82	AKERS-CENTRAL MOTOR LINES, INC.	Liquidating
3/19/82	BOSS-LINCO LINES, INC.	Liquidating
8/1/80	BRADA MILLER FREIGHT SYSTEM	Liquidating
1/25/83	BRIGGS TRANSPORTATION COMPANY	Operating
10/7/81	CHIEF FREIGHT LINES	Liquidating
12/28/81	COOPER-JARRETT, INC.	Liquidating
8/21/81	COURIER-NEWSOM EXPRESS, INC.	Liquidated
8/12/81	FOWLER AND WILLIAMS, INC.	Liquidated
1/31/83	GENERAL HIGHWAY EXPRESS	Operating
2/9/83	GORDONS TRANSPORTS, INC.	Liquidating
7/28/82	HEMINGWAY TRANSPORT	Operating*
7/15/83	IML FREIGHT	Operating
7/8/83	MAISLIN TRANSPORT, INC.	Liquidating
3/2/82	MID-AMERICAN LINES, INC.	Liquidated
1/4/83	MIDWEST EMERY FREIGHT SYSTEMS, INC.	Operating
10/14/82	MOTOR FREIGHT EXPRESS, INC.	Liquidating
4/26/82	SPECTOR-RED BALL	Liquidating
11/26/82	SUPERIOR FORWARDING CO., INC.	Operating
9/16/83	TUCKER FREIGHT LINES, INC.	Operating
7/23/80	WILSON FREIGHT	Liquidated

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*Operating at a minimal level while liquidating most of assets.

STATEMENT

OF

NORMAN A. WEINTRAUB

CHIEF ECONOMIST & DIRECTOR,

DEPARTMENT OF ECONOMICS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

BEFORE THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

OVERSIGHT HEARINGS ON THE MOTOR CARRIER ACT OF 1980

OCTOBER 25, 1983

STATEMENT OF NORMAN A. WEINTRAUB

The International Brotherhood of Teamsters, as collective bargaining representative of over 300,000 drivers, dock workers, office and maintenance workers, employed or on layoff from I.C.C. regulated motor carriers of general freight continues its strenuous opposition to trucking deregulation and the implementation of the Motor Carrier Act of 1980 by the Interstate Commerce Commission.

Since the enactment of the Motor Carrier Act of 1980 on July 1, 1980 the financial condition of the industry drastically deteriorated and layoffs and unemployment of our members in trucking increased sharply each year.

Our annual survey of representative local unions in general freight which began in April, 1981 shows that each year, the number of layoffs and the layoff rate have increased dramatically.

Our latest survey 1/ for April of 1983 shows that in our representative sampling of 36 local unions, some 28,394 over-the-road drivers and other terminal employees out of a total of 87,369 such workers with seniority rights under our National Master Freight Agreement were on layoff - a layoff rate of 32.5%.

From that sample, we were able to estimate statistically, with a 95% degree of confidence, that the layoff rate in the general freight trucking industry in April of 1983 was between 28.6% and 35.7%, and that between 86,000 and 107,000 of our members who were employed under the NMFA when the Motor Carrier Act of 1980 was enacted are now on layoff.

In other words, out of 300,000 drivers and other workers who were gainfully employed by general freight motor carriers in 1979-80 almost 100,000 or 1/3 of the total work force lost their jobs.

In our prior surveys of representative local unions, the responding local unions reported that 22.4% of the road drivers and other terminal personnel were on layoff in April, 1981 and that the layoff rate increased to 28.1% in April, 1982. The 1983 survey shows a further increase to 32.5%.

All regions of the country showed high levels of layoffs and increases in the layoff rates from April, 1982 to April, 1983. The 1983 layoff rates ranged from a low of 26.3% in our Western Conference to a high of 35.4% in our Southern Conference.

A comparison of the responding local unions showed that the great majority had increases in their layoff rates from April 1982 to April 1983.

Only 27.8% of the 36 local unions in our sample showed a decline in their layoff rates between the two years, while some 72.2% or about three-quarters of the locals experienced an increase in layoffs. In addition, of the 36 local unions in our April, 1983 survey, 27 or 75% reported a layoff rate of 25% or higher.

The most recent survey shows also that Teamster members in general freight trucking lost jobs either because motor carriers terminated operations or because they were laid-off from carriers still in business. Of the approximately 100,000 workers on layoff, the International Union estimates that some 30,000 lost their jobs permanently when their employers closed their businesses and about 70,000 are on layoff from motor carriers still in operation. The April, 1983 survey also showed a layoff rate of 23.5% for drivers and other terminal workers who are on the seniority lists of motor carriers who were still in business that month.

For the first time this year, the Teamsters asked several local unions to furnish detailed information so that an effort could be made to determine the duration of layoffs. 2/ Teamster locals in St. Paul, Minnesota; Toledo, Ohio; Harrisburg, Pennsylvania; and Winston-Salem, North Carolina participated, and of the 1,973 over-the-road drivers and other terminal workers on layoff in April, 1983 in these local unions, 26% were on layoff for more than two years.

An analysis of the dates of hire showed that 42% of the workers on layoff had 10 or more years of seniority with their employer. Only about 5% were hired after 1979. None of these workers were laid off by carriers that terminated operations between July 1, 1980 and April 1, 1983.

From three local unions that furnished data on carriers that terminated operations since the enactment of the Motor Carrier Act of 1980, it was determined that 72% of these drivers and other terminal workers who permanently lost their jobs were hired before 1973 - some 27% were hired before 1958.

We feel that the data furnished by these local unions is indicative of the true conditions existing in the general freight trucking industry.

Since the enactment of the Motor Carrier Act of 1980, layoffs have increased annually to the point that almost 100,000 workers or about 33% of the work force have lost their jobs. The layoffs are of long duration and not a short-term condition. A modest or even substantial overall recovery in the general economy will not undo the impact of the Motor Carrier Act of 1980.

In the second quarter of 1983 (three months ended June 30, 1983) a majority of the Large Class I motor carriers of general freight covered under the National Master Freight Agreement posted impressive gains in profits. However, as Appendix D details, the financial gains were made without a corresponding gain in tonnage hauled. The unionized Large Class I motor carriers of general freight had a 1.2% decrease in tonnage hauled between the second quarter of 1982 and the second quarter of 1983 - between the years ended June 30, 1982 and June 30, 1983 the decrease in tonnage hauled was 4.6%.

The failure of general freight tonnage to increase commensurate with the general economic recovery and industrial production in the second quarter of 1983 was not limited to the Large Class I unionized carriers. Analysis of the latest statistics compiled by the Regular Common Carrier Conference (Quarterly Operating Results of the Motor Common Carriers of General Freight - 2nd Quarter - 1983, RRCC) shows that tonnage hauled in the three months ended June 30, 1983 by a sample of 168 motor carriers of general freight was 2.2% below the tonnage hauled in the second quarter of 1982 and 40% below the tonnage hauled in the second quarter of 1979.

While industrial production, as measured by the Index of Industrial Production (1967=100) of the Federal Reserve Board, increased by 3.5% between the 2nd Quarter of 1982 and the 2nd Quarter of 1983 general freight tonnage decreased by 2.2%. Even more distressing is the fact that industrial production in the 2nd Quarter of 1983 was only 4.7% below the 2nd Quarter 1979 level while general freight tonnage hauled fell by 40% in the comparable time period.

As much as we welcomed the financial recovery of many of the Large Class I motor carriers of general freight in the 2nd Quarter of 1983 we must not assume that the severe problems brought by the long economic recession and deregulation are solved:

1. Even with the substantial gains registered by a majority of the Large Class I unionized motor carriers of general freight included in the "I.C.C. Quarterly Report of Large Class I Motor Carriers of Property: for June 30, 1983, a large minority of the unionized Large Class I motor carriers of general freight (10 of 45 carriers or 22.2%) still had an operating loss and a net loss after taxes in the three months ended June 30, 1983.
2. Some carriers that had an operating profit and a net profit after taxes in the Second Quarter of 1983 must still contend with weakened financial structures from several years of losses.

2. (Cont'd.)
   These carriers may not be able to finance the new equipment needed to compete effectively in the next few years.

3. Tonnage hauled in the Second Quarter of 1983 did not increases, on the average, for either the unionized Large Class I motor carriers of general freight or the entire general freight industry.

4. Without a large increase in tonnage the 47,577 persons who permanently lost their jobs when the 45 Class I & II regulated motor carriers of general freight terminated operations between July 1, 1980 and September, 1983 will not find employment in the industry. (See Appendix C)

Since the enactment of the Motor Carrier Act of 1980 the general freight trucking industry and its employees, our members, have suffered steep declines in tonnage, record losses, and high layoffs and layoff rates. Our annual survey of representative local unions showed that about 100,000 drivers and other workers or about 33% of our general freight trucking membership was on layoff status in April, 1983. Analysis of the available data leads to the tentative conclusion that the layoff rate has not declined significantly even with the financial recovery of many carriers in the 2nd Quarter 1983.

We again repeat our offer to cooperate with any Federal Government agency or department study of unemployment and duration of unemployment in the general freight motor carrier industry.

FOOTNOTES:

[1] The 1983 Layoff Survey is appended to this Statement as Appendix A.

[2] The 1983 Length of Layoff Report is appended to this Statement as Appendix B.

APPENDICES TO

STATEMENT OF NORMAN A. WEINTRAUB,
CHIEF ECONOMIST & DIRECTOR, DEPT. OF ECONOMICS
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

BEFORE THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

OVERSIGHT HEARINGS ON THE MOTOR CARRIER ACT OF 1980
OCTOBER 25, 1983

APPENDIX A - "Final Report, Layoffs, Layoff Rates & Employment: April, 1983 - I.C.C. Regulated Motor Carriers- Survey of 37 Representative Local Unions Under NMFA & Chicago Trucking Agreement".

APPENDIX B - "Supplement to 'Final Report, Layoffs & Layoff Rates - Duration of Layoffs, 4 Local Unions Under the NMFA"

APPENDIX C - "Class I & II I.C.C. Regulated Motor Carriers of General Freight That Terminated General Freight Operations From July 1, 1980 to September 30, 1983"

APPENDIX D - "45 Large Class I Motor Carriers of General Freight Under NMFA or Other IBT Agreements"

APPENDIX A

FINAL REPORT
LAYOFFS, LAYOFF RATES & EMPLOYMENT: APRIL, 1983
I.C.C. REGULATED MOTOR CARRIERS
OF
GENERAL FREIGHT
SURVEY OF 37 REPRESENTATIVE LOCAL UNIONS
UNDER THE
NATIONAL MASTER FREIGHT AGREEMENT
AND
CHICAGO TRUCKING AGREEMENT

Prepared by:
Norman A. Weintraub,
Chief Economist &
Director, Dept. of
Economics
International Brotherhood of Teamsters

August 5, 1983

FINAL REPORT
SURVEY OF 36 REPRESENTATIVE LOCAL UNIONS
NATIONAL MASTER FREIGHT AGREEMENT &
CHICAGO TRUCKING AGREEMENT
LAYOFFS & EMPLOYMENT
APRIL, 1983

A. Introduction and Methodology:

In April, 1983 the International Brotherhood of Teamsters distributed survey forms to thirty seven (37) affiliated local unions with significant membership covered by the National Master Freight Agreement 1/ and Supplemental Agreements or the Chicago Trucking Agreement. The same thirty seven (37) local unions that responded to the April, 1981 and April 1982 surveys were included in the 1983 survey. In this report data is presented for thirty six (36) responding local unions.

The selected local unions were requested to report for April, 1983 for the key job classifications of over-the-road driver and local cartage workers (pickup and delivery driver, dock worker, hostler, etc.) the following information:

1). number of workers on the seniority list.
2). number of workers employed.
3). number of workers on layoff.

A separate survey form was to be completed by each selected local union for each Interstate Commerce regulated motor carrier of general freight in its jurisdiction under the National Master Freight Agreement or the Chicago Trucking Agreement. The layoff rate was computed from the survey forms by the IBT Research Department.

As we did for April, 1982, the 1983 survey includes the additional job classifications of maintenance and office workers in Appendix A & B. Those classifications were excluded from the 1981 survey. 2/ To insure comparability with prior surveys, Tables 1.1 to 1.9 & 2.1 do not include office or maintenance workers. Layoff rates for office workers are found in Appendix B while the layoff rate for maintenance employees can be found in Appendix A.

Workers covered by the National Master Freight Agreement who were on layoff on March 1, 1982 (the effective date of the current National Master Freight Agreement) will maintain their seniority for the duration of the current Agreement which will expire on March 31, 1985. Under the previous Agreement workers maintained their seniority for three (3) years while they were in layoff status.

This study and the prior studies analyze layoffs and layoff rates based on survey forms completed by local unions. We cannot determine from the survey data how many of the laid-off workers are technically "unemployed". Unemployment, as defined by the Bureau of Labor Statistics comprises:

> "all persons who did not work during the survey week, who made special efforts to find a job within the past 4 weeks, and who were available for work during the survey week (except for temporary illness). Also included as unemployed are those who did not work at all, were available for work." 3/

The Bureau of Labor Statistics defines as employed:

> "all those who during the survey week did any work at all as paid employees..." 4/ (emphasis supplied).

We believe that few of our laid-off members have found other employment within the jurisdiction of their local unions. In 1982 one of our large local unions verified their membership records and determined that with the overall drop in membership it would not have been possible for laid-off workers covered by this survey to have obtained other employment in establishments covered by the local union's collective bargaining agreement.

To determine "unemployment", as defined by the Bureau of Labor Statistics, will require an extensive study which we believe should be made by the Federal Government. We have previously offered to cooperate in this endeavor. To date, no government agency has accepted our offer to interview IBT local union officials in the trucking industry.

It is also not possible to determine the length of layoff from the survey forms. A separate study is currently being conducted by the Economics Department.

The thirty six local unions were selected on the basis of size and geographical location. 5/ While some 313 local unions affiliated with the IBT have members covered by the National Master Freight Agreement or the Chicago Trucking Agreement, the 36 selected local unions seniority lists in 1983 cover about 33% of the total members employed by ICC regulated general freight carriers.

In some geographic areas only one IBT local union has jurisdiction under the NMFA while in other geographic areas several local unions share the jurisdiction. In addition, in some areas different local unions may have jurisdiction based on job classifications. For example, one local union for over-the-road drivers and a different local union for local cartage workers. While our sample is not technically a random sample, we believe it is representative of the entire regulated general freight industry represented by the IBT. 6/

B. Summary of Results

I. Layoffs and Layoff Rates: Road Drivers & Local Cartage Workers, April, 1983 (Sample Results)

The thirty-six (36) responding local unions, reported 87,369 road drivers and local cartage workers on their seniority lists in April, 1983. Of the total of 87,369 workers with seniority rights in April, 1983, 28,394 or 32.5% were on layoff status.

By IBT Area Conference the following layoff rates were computed for April, 1983 & April 1982:

	1983	1982
Central Conference:	33.6%	29.3%
Eastern Conference:	34.9%	30.4%
Southern Conference:	35.4%	30.3%
Western Conference:	26.3%	24.7%

The 32.5% national layoff rate for the responding 36 local unions excludes maintenance, office workers, and owner-drivers. The data does include 10,274 road drivers and local cartage workers who were employed by I.C.C. regulated motor carriers of general freight under the NMFA that terminated operations between July 1, 1980 and April, 1983. Between April, 1982 and April, 1983 some 3,288 road drivers and local cartage employees represented by the 36 responding local unions were placed on layoff status by carriers that terminated operations during that year.

In April, 1981, the 36 representative local unions reported 22.4% of their road drivers and local cartage workers on layoff while the 37 local unions in April, 1982 had 28.1% of the same job classifications on layoff. The April, 1983 layoff rate of 32.5% for 36 of the 37 representative local unions shows a continuation of the adverse trend in layoffs in trucking.

Table 1.6 compares the April, 1982 and April, 1983 layoff rates for the 36 local unions that responded in both years. Of the 36 local unions, 26 or 72.2% of the responding local unions had a higher layoff rate in April, 1983 than they had in April, 1982. Only 10 local unions or 27.8% of the responding local unions registered improvements in the layoff rate between April, 1982 and April, 1983.

Of the 36 local unions, 27 or 75.0% of the local unions responding in April, 1983 reported a layoff rate of 25.0% or higher while only 5 of the 36 local unions or 13.9% of the responding locals showed a layoff rate of less than 20.0%. (See Table 1.4 for April, 1983 and Table 1.5 for comparisons of 1981-3). The median layoff rate increased from 21.0% in April, 1981 to 28.2% in April, 1982 and further jumped to 34.0% for April, 1983.

II. Estimate of Layoff Rates & Layoffs: I.C.C. Regulated Motor Carriers of General Freight Represented by IBT - April, 1983

By treating all 36 responding local unions as having equal weight (i.e., ignoring the differences in the numbers of the seniority list by local union), we compute a sample mean (average) layoff rate of 32.16% and a sample standard deviation of 10.56% for April, 1983.

Statistical inference (t-test) with a sample size of 36 allows us to estimate, with a 95% degree of confidence, that the layoff rate for the entire IBT represented regulated motor carriers of general freight industry in April, 1983 was between:

28.58% and 35.74%
(See Table 1.2)

In 1979, there were approximately 300,000 drivers and dock personnel employed under the National Master Freight Agreement and Chicago Trucking Agreement. At the present time, we are 95% certain that there were between 85,740 and 107,220 of our drivers and dock personnel on layoff in April, 1983.

Following is a comparison of the estimates of layoffs and layoff rates for the IBT represented regulated general freight industry for April, 1981; April, 1982 and April, 1983.

ROAD DRIVERS & LOCAL CARTAGE WORKERS

	April, 1981 a/	April, 1982 a/	April, 1983 b/
Estimate of Layoff Rates c/	18.76% to 23.67%	25.52% to 31.16%	28.58% to 35.74%
Estimate of Number on Layoff c/	56,280 to 71,010	76,560 to 93,480	85,740 to 107,220

a=based on sample of 37 local unions
b=based on sample of 36 local unions
c=95% level of confidence.

Tables 1.8 and 1.9 show that 30.7% of the over-the-road drivers were on layoff in April, 1983 while the local cartage layoff rate was 32.6%.

We must emphasize that the sample results in Table 1.1 to Table 1.9 and the above estimate of layoff rates include layoffs from motor carriers that terminated operations between July 1, 1980 and April, 1983. July 1, 1980 was the date of enactment of the Motor Carrier Act of 1980.

III. Layoffs & Layoff Rates; Motor Carriers of General Freight in Operation: April, 1983

If we exclude the laid-off employees of motor carriers that terminated operations and only analyze the regulated motor carriers of general freight under the NMFA that were in operation in April, 1983, we find that of the 77,095 road drivers and dock workers on seniority lists of the 36 responding local unions some 18,120 were on layoff. The layoff rate for April, 1983 was 23.5%. (See Table 2.1).

The layoff rate for carriers operating in April, 1982, for the 37 responding local unions, was 22.2%. Despite clear signs of a recovery in the general economy, the layoff rate in IBT represented general freight trucking increased by 1.3% between April, 1982 and April, 1983 even when we exclude carriers that terminated operations.

FOOTNOTES

1. We included those motor carriers who were signatory to the 1979 National Master Freight Agreement who requested independent negotions in 1982.

2. The sample layoff rate for maintenance workers was 27.6% in April, 1983 while the sample layoff rate for office was 30.7% (See Appendix A and Appendix B).

3. Source: Employment and Earnings, April, 1982,
U.S. Department of Labor, Bureau of Labor Statistics;
Page 145.

4. op-cit.

5. T.I.M.E. - D.C., a large class I motor carrier of general freight, was put on strike April 1, 1982. Many of the responding local unions reported all their T.I.M.E. - D.C. members as being on layoff. Although we believe that the management of this carrier provoked this strike so that they could terminate their general freight operation, we have excluded these survey forms from this report and analysis unless the local union reported the layoff and employment situation that existed just before the strike.

6. We excluded owner-operators (owner-drivers) from both the April, 1981, and April, 1982 reports. We did not estimate the layoff rate and layoffs for the entire IBT represented regulated motor carrier industry in this report, which is limited to the IBT represented regulated general freight motor carrier industry.

TABLE 1.1

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

LAYOFF OF ROAD DRIVERS, PICKUP & DELIVERY DRIVERS & TERMINAL WORKERS

APRIL, 1983

	(A)	(B)	(C)	(D)
	Employed	Number Layoff	Total	Percent on Layoff
Eastern Conference				
Local 25	1,775	429	2,204	19.5%
Local 445	496	222	718	30.9%
Local 107	1,098	794	1,892	42.0%
Local 391	2,111	1,422	3,533	40.2%
Local 294	574	376	950	39.6%
Local 592	337	284	621	45.7%
Local 28	468	542	1,010	53.7%
Local 707	2,021	492	2,513	19.6%
Local 776	2,150	309	2,459	12.6%
Local 557	1,447	1,189	2,636	45.1%
Total: 10 Locals	12,477	6,059	18,536	32.7%
Central Conference				
Local 41	3,293	1,131	4,424	25.6%
Local 135	3,426	1,240	4,666	26.6%
Local 710	3,990	1,354	5,344	25.3%
Local 200	2,433	1,524	3,957	38.5%
Local 89	1,233	850	2,083	40.8%
Local 20	2,066	1,027	3,093	33.2%
Local 554	1,172	708	1,880	37.7%
Local 413	1,931	1,132	3,063	37.0%
Local 705	2,944	1,094	4,038	27.1%
Local 299	1,938	1,221	3,159	38.7%
Local 120	1,994	1,255	3,249	38.6%
Total: 11 Locals	26,420	12,536	38,956	32.2%
Southern Conference				
Local 745	2,839	1,760	4,599	38.3%
Local 886	1,554	767	2,321	33.0%
Local 667	2,299	1,657	3,956	41.9%
Local 480	1,691	1,090	2,781	39.2%
Local 728	2,713	886	3,599	24.6%
Total: 5 Locals	11,096	6,160	17,256	35.7%

(Table 1.1 (CON'T.)

	(A) Employed	(B) Number Layoff	(C) Total	(D) Percent on Layoff
Western Conference				
Local 70	1,057	671	1,728	38.8%
Local 63 (357)	1,412	646	2,058	31.4%
Local 17	1,307	884	2,191	33.5%
Local 104	1,088	329	1,417	23.2%
Local 631	162	22	184	12.0%
Local 81	1,137	311	1,448	21.5%
Local 961	559	209	768	27.2%
Local 208	na	na	na	na
Local 224	922	272	1,194	22.8%
Local 741	1,081	86	1,167	7.4%
Local 468	257	209	466	44.8%
Total: 10 Locals	8,982	3,639	12,621	28.8%
Total U.S. (36 Local Unions)	58,975	28,394	87,369	32.5%

Includes employees of carriers that terminated operations between July 1, 1980 & April, 1983.

Does not include Owner-Drivers, Office or Maintenance Workers

na - Not available.

Prepared by:
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Chief Economist
International Brotherhood of Teamsters
August 5, 1983

TABLE 1.2

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

LAYOFF RATE: ROAD DRIVERS, PICKUP & DELIVERY DRIVERS AND TERMINAL WORKERS, U.S.

APRIL, 1983

ESTIMATE OF LAYOFF RATE IN I.C.C. REGULATED GENERAL FREIGHT INDUSTRY REPRESENTED BY I.B.T.

(1)	Average Layoff Rate by Local Union 1/ (Sample Mean)	32.16%
(2)	Sample Standard Deviation	10.56%
	Number of Observations (t=2.031)	36
(3)	Estimate of Layoff Rate At 95% Level of Confidence.	28.58% to 35.74%
(4)	IBT Employment Estimate - National Master Freight Agreement & Chicago Trucking Agreement	300,000
(5)	Estimate of Number on Layoffs, April, 1983.	85,740 to 107,220

1/ unweighted sample mean of layoff rate for each local union in sample.

NOTE: Table excludes maintenance & office workers & owner-drivers. Table inclused employees of motor carriers that terminated operations since July 1, 1980.

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TABLE 1.3

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF LAYOFF RATES BY AREA CONFERENCE: APRIL, 1983

ROAD DRIVERS & LOCAL CARTAGE (PICKUP & DELIVERY DRIVERS & DOCK WORKERS)

	E. Conf. Area	Cen. Conf. Area	So. Conf. Area	West. Conf. Area
Sample Mean (Average)	34.89%	33.55%	35.40%	26.26%
Sample Standard Deviation	13.58%	6.16%	6.85%	11.47%
Number of Local Unions in Sample	10	11	5	10
t test value	2.262	2.228	2.776	2.262
Estimate of Layoff Rates by Area Conference: 95% Level of Confidence	25.18% to 44.60%	29.41% to 37.69%	26.90% to 43.90%	18.06% to 34.46%

Formula: $M = \overline{X} \pm \frac{S}{n^{\frac{1}{2}}} \cdot t$

Where: $\overline{X}$=Sample mean
S=Sample standard deviation
n=number of observations in sample
t=value of t test, (n-1) degrees of freedom.

NOTE: Includes employees of motor carriers that terminated operations since July 1, 1980 Excludes office and maintenance workers and owner-drivers.

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International Brotherhood of Teamsters
August 5, 1983

TABLE 1.4

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

ROAD DRIVERS, PICKUP & DELIVERY DRIVERS & TERMINAL WORKERS

DISTRIBUTION OF LAYOFF RATES: APRIL, 1983

LAYOFF RATE	Number of Local Unions	Percent of Total Number of Local Unions	Cumulative Total
Less than 15.00%	3	8.33%	8.33%
15.00% to 19.99%	2	5.56%	13.89%
20.00% to 24.99%	4	11.11%	25.00%
25.00% to 29.99%	5	13.89%	38.89%
30.00% to 34.99%	5	13.89%	52.78%
35.00% to 39.99%	9	25.00%	77.78%
40.00% to 44.99%	5	13.89%	91.67%
45.00% & over	3	8.33%	100.00%
Totals	36	100.00%	

NOTES: Table excludes maintenance & office workers & owner-drivers. Table includes employees of motor carriers that terminated operations since July 1, 1980.

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TABLE 1.5

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

ROAD DRIVERS, PICKUP & DELIVERY DRIVERS & TERMINAL WORKERS

DISTRIBUTION OF LAYOFF RATES

NUMBER OF LOCAL UNIONS, BY YEAR (1981-1983)

LAYOFF RATE	APRIL 1981	APRIL 1982	APRIL 1983
Less Than 15.00%	7	1	3
15.00% to 19.99%	9	5	2
20.00% to 24.99%	12	8	4
25.00% to 29.99%	2	7	5
30.00% to 34.99%	5	11	5
35.00% to 39.99%	2	3	9
40.00% to 44.99%	0	0	5
45.00% & over	0	2	3
Totals	37	37	36
Median (Average) Layoff Rate	21.0%	28.2%	34.0%

NOTES: Table excludes maintenance & office workers & owner-drivers. Table includes employees of motor carriers that terminated operations since July 1, 1980.

Prepared by:
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August 5, 1983

TABLE 1.6

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

ROAD DRIVERS, PICKUP & DELIVERY DRIVERS & TERMINAL WORKERS

LAYOFF RATES: APRIL, 1982 & APRIL, 1983

	(A)	(B)	(C)
	LAYOFF RATES		Change in Layoff Rate From April, 1982 to April, 1983
	April, 1982	April, 1983	
Eastern Conference			
Local 25	16.7%	19.5%	+2.8%
Local 445	21.5%	30.9%	+9.4%
Local 107	26.9%	42.0%	+15.1%
Local 391	37.5%	40.2%	+2.7%
Local 294	36.2%	39.6%	+3.4%
Local 592	46.2%	45.7%	-0.7%
Local 28	52.9%	53.7%	+0.8%
Local 707	12.9%	19.6%	+6.7%
Local 776	18.0%	12.6%	-5.4%
Local 557	34.8%	45.1%	+10.3%
Total: 10 Locals a/	30.4%	34.9%	+4.5%
Central Conference			
Local 41	22.6%	25.6%	+3.0%
Local 135	25.4%	26.6%	+1.2%
Local 710	21.5%	25.3%	+3.8%
Local 200	32.7%	38.5%	+5.8%
Local 89	34.1%	40.8%	+6.7%
Local 20	33.5%	33.2%	-0.3%
Local 554	34.4%	37.7%	+3.3%
Local 413	34.5%	37.0%	+2.5%
Local 705	28.6%	27.1%	-1.5%
Local 299	29.5%	38.7%	+9.2%
Local 120	25.2%	38.6%	+13.4%
Total: 11 locals a/	29.3%	33.6%	+4.3%
Southern Conference			
Local 745	30.5%	38.3%	+7.8%
Local 886	25.5%	33.0%	+7.5%
Local 667	32.1%	41.9%	+9.8%
Local 480	39.3%	39.2%	-0.1%
Local 728	24.3%	24.6%	+0.3%
Total: 5 Locals a/	30.3%	35.4%	+5.1%

(TABLE 1.6 (CON'T.)

	(A)	(B)	(C)
	LAYOFF RATE		Change in Layoff Rate From April, 1982 to April, 1983
	April, 1982	April, 1983	
Western Conference			
Local 70	34.2%	38.8%	+4.6%
Local 63 (357)	22.8%	31.4%	+8.6%
Local 17	30.6%	33.5%	+2.9%
Local 104	23.8%	23.2%	-0.6%
Local 631	17.3%	12.0%	-5.3%
Local 81	17.4%	21.5%	+4.1%
Local 961	27.6%	27.2%	-0.4%
Local 208	na	na	na
Local 224	24.4%	22.8%	-1.6%
Local 741	17.2%	7.4%	-9.8%
Local 468	32.7%	44.8%	+12.1%
Total: 10 Locals a/	24.8%	26.3%	+1.5%
Total U.S. (36 Local Unions) a/			

Column C: Equals Column B-Column A

NOTE: Table excludes office and maintenance workers and owner-drivers.
Table includes employees of carriers that terminated operations after July 1, 1980.

a/ Sample average

na - not available.

Prepared by:
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August 5, 1983

TABLE 1.7

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

CARRIERS WHO TERMINATED OPERATIONS AFTER JULY 1, 1980

NUMBER OF CARRIERS & EMPLOYEES

	(A) Number of Carriers Who Terminated Operations at Each local union	(B) Number of Road Drivers & Local Cartage Employees on Seniority Lists
Eastern Conference		
Local 25	8	188
Local 445	4	57
Local 107	14	366
Local 391	8	680
Local 294	10	153
Local 592	8	109
Local 28	4	219
Local 707	17	492
Local 776	4	109
Local 557	19	762
Total: 10 Locals		3,135
Central Conference		
Local 41	7	251
Local 135	14	289
Local 710	45	640
Local 200	17	544
Local 89	20	289
Local 20	28	265
Local 554	7	202
Local 413	16	412
Local 705	19	435
Local 299	26	379
Local 120	8	489
Total: 11 Locals		4,195
Southern Conference		
Local 745	3	536
Local 886	5	101
Local 667	5	727
Local 480	15	504
Local 728	3	129
Total: 5 Locals		1,997

(TABLE 1.7 (CON'T.)

	(A) Number of Carriers Who Terminated Operations at Each Local Union	(B) Number of Road Drivers & Local Cartage Employees on Seniority Lists
Western Conference		
Local 70	4	45
Local 63 (357)	3	26
Local 17	5	550
Local 104	1	19
Local 631	1	2
Local 81	3	9
Local 961	9	139
Local 208	na	na
Local 224	11	87
Local 741	0	0
Local 468	7	70
Total: 10 Locals		947
Total U.S. (36 Locals)		10,274

Local Cartage Employees include pickup & delivery drivers & terminal workers but exclude office & maintenance workers, road drivers & owner-drivers.

na - not available.

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August 5, 1983

TABLE 1.8

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT
SURVEY OF REPRESENTATIVE LOCAL UNIONS
OVER-THE-ROAD DRIVERS, LAYOFFS & LAYOFF RATE
APRIL, 1983

			APRIL, 1983	
	(A)	(B)	(C)	(D)
	Number			
	Employed	Layoff	Total	Percent on Layoff
Eastern Conference				
Local 25	122	45	167	26.9%
Local 445	31	10	41	24.4%
Local 107	90	52	142	36.6%
Local 391	908	741	1,649	44.9%
Local 707	234	124	358	34.6%
Local 294	(126)	(30)	(156)	(19.2%)
Local 776	971	110	1,081	10.2%
Local 592	68	35	103	34.0%
Local 557	270	253	523	48.4%
Local 28	168	284	452	62.8%
Total: 10 Locals	2,988	1,684	4,672	36.0%
Central Conference				
Local 41	1,422	352	1,774	19.8%
Local 135	1,591	594	2,185	27.2%
Local 299	321	156	477	32.7%
Local 710	2,605	1,102	3,707	29.7%
Local 200	763	445	1,208	36.8%
Local 120	450	249	699	35.6%
Local 89	501	104	605	17.2%
Local 20	(1,026)	(324)	(1,350)	(24.0%)
Local 554	437	224	661	33.9%
Local 413	909	540	1,449	37.3%
Total: 10 Locals	10,025	4,090	14,115	29.0%
Southern Conference				
Local 745	820	451	1,271	35.5%
Local 728	792	371	1,163	31.9%
Local 667	1,038	636	1,674	38.0%
Local 886	931	422	1,353	31.2%
Local 480	(866)	(310)	(1,176)	(26.4%)
Total: 5 Locals	4,447	2,190	6,637	33.0%

(TABLE 1.8 (CON'T)

			APRIL, 1983	
	(A)	(B)	(C)	(D)
	Number			Percent on
	Employed	Layoff	Total	Layoff
Western Conference				
Local 741	x	x	x	x
Local 224	922	272	1,194	
Local 468	257	209	466	44.8%
Local 104	427	86	513	16.8%
Local 631	13	14	27	51.9%
Local 81	301	85	386	22.0%
Local 961	559	209	768	27.2%
Total: 7 Locals	2,479	875	3,354	26.1%
Total U.S. (32 Locals)	19,939	8,839	28,778	30.7%

( ) Does not include road drivers from carriers that terminated operations since July 1, 1980.

NOTES: Except for Local Unions 294, 20 & 480, data includes employees of motor carriers that terminated operations since July 1, 1980.
Data for Local 741 - not available.

Locals 17,705, 70, 63 (357) & 208 do not represent over-the-road drivers.

Prepared By:
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August 5, 1983

TABLE 1.9

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

LOCAL CARTAGE WORKERS (PICKUP & DELIVERY DRIVERS & DOCK WORKERS)

LAYOFFS & LAYOFF RATE, APRIL, 1983

	(A)	(B)	(C)	(D)
	Number			
	Employed	Layoff	Total	Percent on Layoff
Eastern Conference				
Local 25	1,653	384	2,037	18.9%
Local 445	465	212	677	31.3%
Local 107	1,008	742	1,750	42.4%
Local 391	1,203	681	1,884	36.7%
Local 707	1,787	368	2,155	17.1%
Local 294	(448)	(193)	(641)	(30.1%)
Local 776	1,179	199	1,378	14.4%
Local 592	269	140	409	34.2%
Local 557	1,117	936	2,113	44.3%
Local 28	300	258	558	46.2%
Total: 10 Locals	9,489	4,113	13,602	30.2%
Central Conference				
Local 41	1,871	779	2,650	29.4%
Local 135	1,835	646	2,481	26.0%
Local 299	1,617	1,065	2,682	39.7%
Local 710	1,385	252	1,637	15.4%
Local 200	1,670	1,079	2,749	39.3%
Local 120	1,544	1,006	2,550	39.5%
Local 89	732	746	1,478	50.5%
Local 20	(1,040)	(438)	(1,478)	(29.6%)
Local 554	735	484	1,219	39.7%
Local 413	1,022	592	1,614	36.7%
Local 705	2,944	1,094	4,038	27.1%
Total: 11 Locals	16,395	8,181	24,576	33.3%
Southern Conference				
Local 745	2,019	1,309	3,328	39.3%
Local 728	1,921	515	2,436	21.1%
Local 667	1,261	1,021	2,282	44.7%
Local 886	623	345	968	35.6%
Local 480	(825)	(276)	(1,101)	(25.1%)
Total: 5 Locals	6,649	3,466	10,115	34.3%

(TABLE 1.9 (CON'T.)

	(A) Number Employed	(B) Layoff	(C) Total	(D) Percent on Layoff
Western Conference				
Local 70	1,057	671	1,728	38.8%
Local 741	na	na	na	na
Local 63 (357)	1,412	646	2,058	31.4%
Local 17	1,307	884	2,191	33.5%
Local 104	1,088	329	1,417	23.2%
Local 631	149	8	157	5.1%
Local 81	836	226	1,062	21.3%
Local 208	na	na	na	na
Total: 6 Locals	5,849	2,764	8,613	32.1%
Total U.S. (30 Locals)	38,382	18,524	56,906	32.6%

( ) Does not include local cartage workers from carriers that terminated operations since July 1, 1980.

NOTES: Except for Local Unions 294, 20 & 480, data includes employees of motor carriers that terminated operations since July 1, 1980. Data for Local Union 741 and Local Union 208 not available.

Locals 224, 468 & 961 do not represent local cartage workers.

na - not available.

Prepared by:
Norman A. Weintraub
Chief Economist, IBT
August 5, 1983

TABLE 2.10

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

ROAD DRIVERS & LOCAL CARTAGE WORKERS: LAYOFFS & LAYOFF RATES - APRIL, 1983

CARRIERS IN OPERATION APRIL, 1983

	(A) Number Employed	(B) Layoff	(C) Total	(D) Percent on Layoff
Eastern Conference				
Local 25	1,775	241	2,016	12.0%
Local 445	496	165	661	25.0%
Local 107	1,098	428	1,526	28.0%
Local 391	2,111	742	2,853	26.0%
Local 294	574	223	797	28.0%
Local 592	337	175	512	34.2%
Local 28	468	323	791	40.8%
Local 707	2,021	0	2,021	0
Local 776	2,150	200	2,350	8.5%
Local 557	1,447	427	1,874	22.8%
Total: 10 Locals	12,477	2,924	15,401	19.0%
Central Conference				
Local 41	3,293	880	4,173	21.1%
Local 135	3,426	951	4,377	21.7%
Local 710	3,990	714	4,704	15.2%
Local 200	2,433	980	3,413	28.7%
Local 89	1,233	561	1,794	31.3%
Local 20	2,066	762	2,828	26.9%
Local 554	1,172	506	1,678	30.2%
Local 413	1,931	720	2,651	27.2%
Local 705	2,944	659	3,603	18.3%
Local 299	1,938	842	2,780	30.3%
Local 120	1,994	766	2,760	27.8%
Total: 11 Locals	26,420	8,341	34,761	24.0%
Southern Conference				
Local 745	2,839	1,224	4,063	30.1%
Local 886	1,554	666	2,220	30.0%
Local 667	2,299	930	3,229	28.8%
Local 480	1,691	586	2,277	25.7%
Local 728	2,713	757	3,470	21.8%
Total: 5 Locals	11,096	4,163	15,259	27.3%

	(A)	(B)	(C)	(D)
	Number			
Western Conference	Employed	Layoff	Total	Percent on Layoff
Local 70	1,057	626	1,683	37.2%
Local 63 (357)	1,412	620	2,032	30.5%
Local 17	1,307	334	1,641	20.4%
Local 104	1,088	310	1,398	22.2%
Local 631	162	20	182	11.0%
Local 81	1,137	302	1,439	21.0%
Local 961	559	70	629	11.1%
Local 208	na	na	na	na
Local 224	922	185	1,107	16.7%
Local 741	1,081	86	1,167	7.4%
Local 468	257	139	396	35.1%
Total: 10 Locals	8,982	2,692	11,674	23.1%
Total U.S. ( )	58,975	18,120	77,095	23.5%

Excludes employees of motor carriers that terminated operations since July 1, 1980.

Table also excludes office and maintenance workers and owner-drivers.

na - not available.

Prepared by:
Norman A. Weintraub
Chief Economist, IBT
August 5, 1983

APPENDIX A

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

MAINTENANCE WORKERS, LAYOFFS & LAYOFF RATE

APRIL, 1983

	(A)	(B)	(C)	(D)
	Number			
	Employed	Layoff	Total	Percent On Layoff
Eastern Conference				
Local 25	33	5	38	13.2%
Local 445	33	2	35	5.7%
Local 107	-	-	-	-
Local 391	406	216	622	34.7%
Local 294	24	8	32	25.0%
Local 592	6	2	8	25.0%
Local 28	14	16	30	53.3%
Local 707	27	0	27	0
Local 776	285	60	345	17.4%
Local 557	-	-	-	-
Total	828	309	1,137	27.2%
Central Conference				
Local 41	-	-	-	-
Local 135	298	115	413	27.8%
Local 710	-	-	-	-
Local 200	40	24	64	37.5%
Local 120	56	22	78	28.2%
Local 89	84	29	113	25.7%
Local 20	174	35	209	16.7%
Local 554	28	8	36	22.2%
Local 413	-	-	-	-
Local 705	-	-	-	-
Local 299	44	1	45	2.2%
Total	724	234	958	24.4%
Southern Conference				
Local 745	352	130	482	27.0%
Local 728	310	114	424	26.9%
Local 667	226	192	418	45.9%
Local 886	107	6	113	5.3%
Local 480	159	62	221	28.1%
Total	1,154	504	1,658	30.4%

(APPENDIX A (CON'T.)

	(A) Number Employed	(B) Layoff	(C) Total	(D) Percent on Layoff
Western Conference				
Local 70	6	1	7	14.3%
Local 63 (357)	-	-	-	-
Local 17	-	-	-	-
Local 104	-	-	-	-
Local 631	-	-	-	-
Local 81	-	-	-	-
Local 961	-	-	-	-
Local 208	-	-	-	-
Local 763x	72	11	83	13.3%
Local 224	-	-	-	-
Local 741	-	-	-	-
Local 495				
Local 468	-	-	-	-
Total	78	12	90	13.3%
Total U.S. ( )	2,784	1,059	3,843	27.6%

Includes maintenance workers of motor carriers that terminated operations since July 1, 1980

x Local 763 represents office and maintenance employees in Seattle, Washington.

Prepared by:
Norman A. Weintraub
Chief Economist, IBT
August 5, 1983

APPENDIX B

NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO TRUCKING AGREEMENT

SURVEY OF REPRESENTATIVE LOCAL UNIONS

OFFICE WORKERS, LAYOFFS & LAYOFF RATE, APRIL, 1983

	(A)	Number	(C)	(D)
	Employed	(B) Layoff	Total	Percent On Layoff
Eastern Conference				
Local 25	46	12	58	20.7%
Local 445	-	-	-	-
Local 107	-	-	-	-
Local 391	65	29	94	30.9%
Local 294	-	-	-	-
Local 592	4	10	14	71.4%
Local 28	16	0	16	0
Local 707	48	11	59	18.6%
Local 557	-	-	-	-
Local 776	10	0	10	0
Total	189	62	251	24.7%
Central Conference				
Local 41	-	-	-	-
Local 135	163	66	229	28.8%
Local 710	x	x	x	x
Local 200	79	64	143	44.8%
Local 120	57	98	155	63.2%
Local 89	40	42	82	51.2%
Local 20	82	21	103	20.4%
Local 554	53	16	69	23.2%
Local 413	-	-	-	-
Local 705	-	-	-	-
Local 299	179	78	257	30.4%
Total	653	385	1038	37.1%
Southern Conference				
Local 745	242	154	396	38.9%
Local 728	143	61	204	29.9%
Local 667	136	88	224	39.3%
Local 886	105	48	153	31.4%
Local 480	64	32	96	33.3%
Total	690	383	1,073	35.7%

APPENDIX B (CON'T.)

	(A)	(B)	(C)	(D)
	Number			Percent on
	Employed	Layoff	Total	Layoff
Western Conference				
Local 70	19	3	22	13.6%
Local 63 (357)	769	186	955	19.5%
Local 17	-	-	-	-
Local 104	78	24	102	23.5%
Local 631	-	-	-	-
Local 81	6	0	6	0
Local 961	28	57	85	67.1%
Local 208	-	-	-	-
Local 763x	174	56	230	24.3%
Local 224	-	-	-	-
Local 741	-	-	-	-
Local 468	-	-	-	-
Total	1,074	326	1,400	23.3%
Total U.S.	2,606	1,156	3,762	30.7%

NOTE: Includes employees of carriers that terminated operations since July 1, 1980.

x Data for Local 710, not available.

Prepared by:
Norman A. Weintraub
Chief Economist, IBT
August 5, 1983

APPENDIX C

LISTING OF LOCALS FOR NMFA & CHICAGO EMPLOYMENT SURVEY

APRIL, 1983

LOCAL UNIONS

Eastern Conference	(10)
Local 25	Boston, Massachusetts
Local 445	Yonkers, New York
Local 107	Philadelphia, Pennsylvania
Local 391	Greensboro, North Carolina
Local 294	Albany, New York
Local 592	Richmond, Virginia
Local 28	South Carolina (West & Central)
Local 707	New York, New York
Local 776	Harrisburg, Pennsylvania
Local 557	Baltimore, Maryland

Central Conference	(11)
Local 41	Kansas City, Missouri
Local 135	Indianapolis, Indiana
Local 710	Chicago, Illinois (O-T-R & Dock)
Local 200	Milwaukee, Wisconsin
Local 120	St. Paul, Minnesota
Local 89	Louisville, Kentucky
Local 20	Toledo, Ohio
Local 554	Omaha, Nebraska
Local 413	Columbus, Ohio
Local 705	Chicago, Illinois (P & D Drivers)
Local 299	Detroit, Michigan

Southern Conference	(5)
Local 745	Dallas, Texas
Local 728	Atlanta, Georgia
Local 667	Memphis, Tennessee
Local 886	Oklahoma City, Oklahoma
Local 480	Nashville, Tennessee

Western Conference	(11)
Local 70	Oakland, California (Local Cartage)
Local 357	Los Angeles, California (Terminal)
Local 17	Denver, Colorado
Local 104	Phoenix, Arizona (Local Cartage)
Local 631	Las Vegas, Nevada
Local 81	Portland, Oregon
Local 961	Denver, Colorado (Line Drivers)
Local 208	Los Angeles, California (P& D Drivers)
Local 224	Los Angeles, California (Road Drivers)
Local 741	Seattle, Washington
Local 468	Oakland, California (Road Drivers)

EMPLOYMENT SURVEY FORM - APRIL, 1983

I.C.C REGULATED MOTOR CARRIERS ONLY

NATIONAL MASTER FREIGHT AGREEMENT &

SUPPLEMENTAL AGREEMENTS & CHICAGO TRUCKING AGREEMENT

LOCAL UNION # ____________

COMPANY NAME ______________________________

TERMINAL LOCATION (City & State) ______________________

APRIL 1, 1983

Job Classification	Number of Full Time Workers Employed 1/	Number of Full Time Workers on Layoff 2/	Total Number On Seniority List 1/ 2/
Line Drivers (O-T-R)			
Local Cartage (Pick-Up-Delivery Drivers & Dock Workers, Switchers & Hostlers)			
SUB TOTAL			
Office 3/			
Maintenance 3/			
GRAND TOTAL			

1/ Include all full time employees on active payroll including vacations, sick leave, jury duty.

2/ Include all employees on layoff who maintain seniority under the Agreement.

3/ Include office or maintenance employees where these employees are covered by Supplemental Agreements or Riders to National Master Freight Agreement or carriers that were covered under 1979 NMFA that requested independent negotiations in 1982.

Include carriers who were covered by the 1979 National Master Freight Agreement and requested independent negotiations in 1982, or carriers that were covered under 1979 NMFA that requested independent negotiations in 1982.

Please complete a separate survey form for each company in your jurisdiction under the National Master Freight Agreement or Supplemental Agreements or carriers covered under 1979 NMFA that requested independent negotiations in 1982.

Note: Include any terminals that have closed since June 30, 1980 with date of closing: ______________________

____

Survey Completed by: Name & Local ____________

____

TITLE: ______________________

DATE: ______________________

Please return completed survey forms as soon as possible to:
Norman A. Weintraub, Director of Research & Chief Economist
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

APPENDIX B

SUPPLEMENT
TO

"FINAL REPORT: LAYOFFS, LAYOFF RATES & EMPLOYMENT
APRIL, 1983
I.C.C. REGULATED MOTOR CARRIERS OF GENERAL FREIGHT"

DURATION OF LAYOFFS: 4 LOCAL UNIONS UNDR THE NATIONAL MASTER FREIGHT AGREEMENT AS OF APRIL, 1983

Prepared by:
Norman A. Weintraub, Chief Economist &
Director, Department of Economics
September 19, 1983

DURATION OF LAYOFFS: 4 LOCAL UNIONS
UNDER THE NATIONAL MASTER FREIGHT AGREEMENT
AS OF APRIL, 1983

A. INTRODUCTION

To supplement the 1983 Layoff Study the IBT requested that four local unions that participated in the full study furnish additional information on laid-off workers employed under the National Master Freight Agreement. The four local unions that participated in this study are, as follows:

IBT Local #20:	Toledo, Ohio
IBT Local #120:	St. Paul, Minnesota
IBT Local #391:	Winston-Salem, North Carolina
IBT Local #776:	Harrisburg, Pennsylvania

The local unions furnished listings which showed, by terminal, the date of hire, and the date of layoff of each over-the-road driver and local cartage worker (pick-up & delivery driver, cargo handler, hostler, etc.) on layoff status on April 1, 1983.

The "Summary Tables" differentiate between motor carriers of general freight that were in active operation in April, 1983 and motor carriers of general freight that terminated operations between July 1, 1980 and April 1, 1983.

We feel that the results from the four local unions is indicative of the conditions existing in the unionized I.C.C. regulated motor carriers of general freight industry.

B. SUMMARY OF RESULTS

I. Carriers in Active Operations: April, 1983

The four local unions had a total of 1,973 road drivers and local cartage workers on layoff on April 1, 1983 from I.C.C. regulated motor carriers of general freight covered by the National Master Freight Agreement.

Following are the percent on layoff status by local union, as of April 1, 1983 by duration of layoff:

DURATION OF LAYOFF
(Percent of Total By Local)

	Less than 6 months	6 mos. to 1 year	1 yr. to 2 years	2 yrs. or longer
LOCAL 20	46.7%	11.4%	15.7%	26.2%
LOCAL 120	38.8%	16.9%	21.9%	22.4%
LOCAL 391	33.2%	22.7%	14.3%	29.8%
LOCAL 776	49.7%	21.7%	7.5%	29.1%
Percent of Total	39.3%	18.3%	16.5%	25.9%

Of the 1,973 laid off workers some 511 or 25.9% were on layoff for two years or longer and a total of 836 or 43.2% were on layoff status, as of April 1, 1983 for at least one year.

Dates of hire were available on 1,834 laid-off workers in the four local unions. Of these 1,834 workers 771 or 42% were hired before 1973 - had at least 10 years of service in April, 1983. Only 82 workers or 4.5% of the laid-off workers were hired on or after January 1, 1980 - at least 95% of the laid-off workers in carriers active on April 1, 1983 were hired before the enactment of the Motor Carrier Act of 1980. In addition, 295 of the 1,834 workers or 16.1% had 15 or more years of service - hired before 1968.

II. MOTOR CARRIERS OF I.C.C. REGULATED GENERAL FREIGHT THAT TERMINATED OPERATIONS BETWEEN JULY 1, 1980 AND APRIL 1, 1983.

Dates of hire of over-the-road drivers and local cartage workers were available from three of the four local unions (Locals 120, 391 & 776) for I.C.C. regulated general freight motor carriers under the N.M.F.A. that terminated operations between July 1, 1980 and April 1, 1983.

Of the 1,232 drivers & local cartage workers that permanently lost their jobs because their employers terminated operations only about 18 or 1.5% were hired after the enactment of the Motor Carrier Act of 1980. Over 25% of the 1,232 workers had 25 or more years of service (hired before 1958) while 889 workers or 72% had 10 or more years of service.

NOTES: Years of service and/or seniority were measured by a assuming workers worked until April, 1983.

We could not determine from the available data whether workers had obtained other employment in the trucking or other industries. We could also analyze layoffs and duration of layoffs. We have excluded office & maintenance employees and owner-drivers.

NAW/ma
Attachments

SUMMARY TABLE 1

ROAD DRIVERS & LOCAL CARTAGE WORKERS

CARRIERS IN OPERATION - APRIL, 1983

Period of Time on Layoff Status	NUMBER LAID-OFF (APRIL, 1983)					
	Local # 120	Local # 20	Local # 776	Local # 391	Total (4 locals)	% of Tota
Up to 3 mos.	90	130	80	192	492	24.9%
3 mos. but less 6 mos.	155	75	0	54	284	14.4%
6 mos. but less 9 mos.	80	11	0	148	239	12.1%
9 mos. but less 12 mos.	27	39	35	21	122	6.2%
12 mos. but less 15 mos.	45	32	0	6	83	4.2%
15 mos. but less 18 mos.	48	21	12	66	147	7.5%
18 mos. but less 21 mos.	32	0	0	21	53	2.7%
21 mos. but less 24 mos.	13	16	0	13	42	2.1%
24 mos. but less 27 mos.	18	21	0	5	44	2.2%
27 months & more	123	94	34	216	467	23.7%
Total number on Layoff (date of layoff available)	631	439	161	742	1,973	100.0%
Number on Layoff						
Less than 1 year	352	255	115	415	1,137	57.6%
2 years or longer	141	115	34	221	511	25.9%

SUMMARY TABLE 2

ROAD DRIVERS & LOCAL CARTAGE WORKERS

CARRIERS IN OPERATION: APRIL, 1983

	PERCENT OF TOTAL LAYOFFS (APRIL, 1983)			
Period of Time on Layoff Status	Local # 120	Local # 20	Local # 776	Local # 391
Up to 3 months	14.3%	29.6%	49.7%	25.9%
3 mos. but less 6 mos.	24.5%	17.1%	0	7.3%
6 mos. but less 9 mos.	12.6%	2.5%	0	19.9%
9 mos. but less 12 mos.	4.3%	8.9%	21.7%	2.8%
12 mos. but less 15 mos.	7.1%	7.3%	0	0.8%
15 mos. but less 18 mos.	7.6%	4.8%	7.5%	8.9%
18 mos. but less 21 mos.	5.1%	0	0	2.8%
21 mos. but less 24 mos.	2.1%	3.6%	0	1.8%
24 mos. but less 27 mos.	2.9%	4.8%	0	0.7%
27 months & more	19.5%	21.4%	21.1%	29.1%
	100.0%	100.0%	100.0%	100.0%
Total Number on Layoff (date of layoff available)	631	439	161	742
Percent on Layoff				
Less than 1 year	55.7%	58.1%	71.4%	55.9%
2 years or longer	22.4%	26.2%	21.1%	29.8%

SUMMARY TABLE 3

ROAD DRIVERS & LOCAL CARTAGE WORKERS

CARRIERS IN OPERATION - APRIL, 1983

	NUMBER LAID OFF - BY DATE OF HIRE					
DATE OF HIRE	Local # 120	Local # 20	Local # 776	Local # 391	Total (4 locals)	% of Total
Before 1958	12	49	0	0	61	3.3%
1958 - 1962	20	32	0	3	55	3.0%
1963 - 1967	71	63	0	45	179	9.8%
1968 - 1972	82	100	0	294	476	26.0%
1973	44	68	1	116	229	12.5%
1974	17	23	4	44	88	4.8%
1975	11	7	5	11	34	1.9%
1976	37	3	21	41	102	5.6%
1977	40	12	28	64	144	7.9%
1978	73	59	43	96	271	14.8%
1979	75	16	4	18	113	6.2%
1980	4	4	4	3	15	0.8%
1981 - 1983	10	2	51	4	67	3.7%
TOTAL ON LAYOFF: (date of layoff available)	496	438	161	739	1,834	100.0%
NUMBER HIRED BEFORE 1973	185	244	0	342	771	
Percent of Total:	37.3%	55.7%	0	46.3%	42.0%	

SUMMARY TABLE 4

ROAD DRIVERS & LOCAL CARTAGE WORKERS

CARRIERS TERMINATED OPERATIONS: 7-1-80 to 4-83

	NUMBER LAID OFF - BY DATE OF HIRE				
DATE OF HIRE:	(A) Local 776	(B) Local 391	(C) Local 120	TOTAL (A) + (B) +(C) (3 locals)	% of Total Layoffs
Before 1958	15	189	124	328	26.6%
1958 - 1962	3	96	65	164	13.3%
1963 - 1967	10	114	67	191	15.5%
1968 - 1972	10	75	121	206	16.7%
1973	1	28	26	55	4.5%
1974	1	9	14	24	1.9%
1975	1	5	0	6	0.5%
1976	8	25	12	45	3.7%
1977	2	45	29	76	6.2%
1978	4	51	29	84	6.8%
1979	0	14	21	35	2.8%
1980	0	9	2	11	0.9%
1981 - 1983	0	7	0	7	0.6%
TOTAL	55	667	510	1,232	100.0%
NUMBER HIRED BEFORE 1973:	38	474	377	889	
Percentage of Total:	69.1%	71.1%	73.9%	72.2%	

APPENDIX C

CLASS I & II I.C.C. REGULATED MOTOR CARRIERS OF GENERAL FREIGHT THAT TERMINATED GENERAL FREIGHT OPERATIONS FROM JULY 1, 1980 TO SEPTEMBER 30, 1983

SUMMARY

As of September, 1983 we have identified 45 general freight motor carriers (Class I & II, I.C.C. regulated) that terminated general freight operations since the enactment of the Motor Carrier Act of 1980. The 45 carriers employed 47,577 persons in 1979 and had total operating revenues of $2.2 billion in 1979.

The terminated general freight operations represented 13.0% of the total number of persons employed by all Class I & II I.C.C regulated general freight carriers in 1979 and 13.0% of the total operating revenue of those 728 carriers in 1979, - however, the 45 identified carriers represent only 6.2% of the 728 I.C.C. regulated general freight Class I & II motor carriers in active operation in 1979.

Some of the 45 carriers may be continuing owner-operator operations. The listing of 45 carriers does not include several carriers that are in Chapter XI bankruptcy status but are still operating. It also does not include Class III regulated general freight carriers or specialized I.C.C. regulated carriers that may have terminated operations.

Prepared by:
Norman A. Weintraub, Chief Economist &
Director, Department of Economics
October 14, 1983

TABLE C1
CLASS I & CLASS II
I.C.C. REGULATED MOTOR CARRIERS OF GENERAL FREIGHT UNDER NMFA
TERMINATED OPERATIONS SINCE JULY 1, 1980 (TO 9/83)

EMPLOYMENT & OPERATING REVENUES: 1979

		Number of Employees in 1979	1979 Operating Revenues (millions $)
1.	Spector Red Ball 4/	7,610	$435.3
2.	Jones Motor Co. 3/	3,547	$147.5
3.	Wilson Freight Co.	3,754	$165.1
4.	Johnson Motor Lines	2,515	$94.6
5.	T.I.M.E.-D.C. 3/ (strike)	3,303	$169.7
6.	Motor Freight Express	1,802	$75.7
7.	Gordon's Transport	2,163	$97.6
8.	Maislin Transport 2/	6,375	$303.4
9.	Hemingway Transport (strike)	1,268	$64.4
10.	Mid American Lines	971	$43.5
11.	Eazor Express 3/	1,268	$61.2
12.	Cooper-Jarrett 3/	1,532	$66.3
13.	Davidson Transfer 2/	697	$30.2
14.	Rio Grande Motor Lines 3/	648	$23.1
15.	Chief Freight Lines	1,038	$39.4
16.	Boss Linco Lines	1,012	$48.3
17.	Brada Miller Freight	616	$40.4
18.	Courier Newsome Express	475	$23.6
19.	Tennessee Carolina Transport	595	$23.3
20.	Perkins Trucking Co.	399	$15.1
21.	Auclair Transportation Co.	270	$10.6
22.	Chippewa Motor Freight 1/	382	$18.1
23.	Dean Truck Lines	158	$6.1
24.	Fox and Ginn	278	$10.2
25.	William Hayes Line	105	$4.8
26.	Nebraska - Iowa Express	133	$7.2
27.	Pulaski Highway Express	154	$4.9
28.	Admiral Merchants 3/	445	$26.2
29.	Standard Motor Freight	102	$5.4
30.	Waverly Transfer	34	$1.8
31.	Graf Brothers	129	$4.6
32.	Bowling Green Express 1/	187	$6.7
33.	American Freightways	90	$4.3
34.	P. Callahan	153	$6.1
35.	Badger Freightways	105	$6.9
36.	Murfreesboro Freight Line	44	$2.5
37.	Carpenters	39	$1.4
38.	Sims Motor	82	$14.3
39.	GMW (Glendenning) 1/	828	$27.6
40.	Sioux Transportation	151	$6.8
41.	North Shore & Central	195	$9.3
42.	Denver-Midwest	320	$15.1
43.	Intercity Transport	127	$5.8
44.	Silver Wheel Freight Lines	818	$23.9
45.	Orscheln Bros. Truck Lines 1/	660	$25.4
	TOTAL	47,577	$2,223.8

NOTES TO TABLE C1

Include motor carriers of general freight under the NMFA that either terminated all operations or terminated general freight operations but may be continuing owner-operator operations.

1/ 1978 operating revenue and number of employees.

2/ Includes the following carriers in 1979:

Maislin-Delaware:	1,379 employees;	$77.4 million in revenues
Maislin Transport:	1,128 employees;	$43.0 million in revenues
Gateway Transport:	3,253 employees:	$147.4 million in revenues
Quinn Freight Lines:	615 employees:	$35.6 million in revenues

3/ May be continuing other operations.

4/ 1980 employment & operating revenue (Merger of Spector Freight System, Inc. and Red Ball Motor which had a combined total of 9,310 employees $ $449.8 million in operating revenue).

5/ Table does not include carriers that terminated operations by merger, where surviving carriers are still operating; for example, ABF (ETMF) & Halls (Dohrn Transfer). ETMF had 5,025 employees in 1979 while Dohrn Transfer had 1,642 employees in 1979. Employment is for all employees - not just for IBT.

6/ Some of the carriers may be iron & steel carriers.

7/ Carriers in Chapter XI but operating in Sept. 1983:

	# of Employees 1979	1979 Operating Revenues Revenues (millions $)
Briggs Transportation	1,808	$64.9
IML Freight, Inc.	3,624	$159.1
Tucker Freight	837	$40.6

SOURCE: "1979 Motor Carrier Annual Report, F & OS, " American Trucking Associations (for employment & operating revenue)

Prepared by: Norman A. Weintraub, Chief Economist
International Brotherhood of Teamsters
October 14, 1983

TABLE C.2
CLASS I & CLASS II
I.C.C. REGULATED MOTOR CARRIERS OF GENERAL FREIGHT UNDER NMFA
TERMINATED OPERATIONS SINCE JULY 1, 1980 (TO 9/83)

		Number of Carriers	Number of Employees (b) 1979	1979 Operating Revenues ($ millions)
(A)	TERMINATED OPERATIONS: c/	45	47,577	$2,223.8
(B)	TOTAL CLASS I & CLASS II GENERAL FREIGHT CARRIERS IN 1979 a/	728	364,647	$17,052.8
(C)	PERCENT OF TERMINATIONS (IBT) TO TOTAL CLASS I & CLASS II GENERAL FREIGHT CARRIERS IN 1979	6.2%	13.0%	13.0%

a/ Includes all carriers in category, Union & non-union.

b/ Includes all employees - not just IBT.

c/ Includes carriers that terminated general freight operations but may have continued owner-operator operations.

d/ Does not include carriers that merged where surviving carrier is still in operation.

SOURCE: Table 1 and "1979 Motor Carriers Annual Report, F & OS" American Trucking Association (for Employment & Operating revenues)

APPENDIX D

LARGE CLASS I MOTOR CARRIERS OF GENERAL FREIGHT - FINANCIAL CONDITION & TONNAGE: SECOND QUARTER 1983

A. FINANCIAL CONDITION - SECOND QUARTER 1983:

The attached Table D.I presents an oversight of the financial condition of 45 Large Class I motor carriers of general freight who are under the NMFA or independent contract with the IBT, as of June 30, 1983. There is no doubt that in the second quarter of 1983 (3 months ended June 30, 1983) that the financial condition of many of the large unionized carriers showed substantial improvement. For example, 26 of these 45 carriers had an operating ratio higher than 100.0 in the year ended 6/30/82 while only 10 of these 45 carriers had an operating ratio higher than 100.0 in the second quarter of 1983.

At the same time, in the year ended 6/30/82, only 2 of these 45 carriers had an operating ratio lower than 92.0 while in the second quarter of 1983 the number of Large Class I unionized carriers with an operating ratio lower than 92.0 had increased to 9.

Please note that the 45 carriers analyzed were in operation during the entire period. The list of 45 Large Class I motor carriers of general freight under the NMFA or independent IBT contract excludes carriers that terminated operations such as Spector Red Ball, Maislin, Cooper-Jarrett, MFX, Eazor, Gordons, etc. or carriers still in operation but who substantially decreased operations. (For example, Briggs Transportation in Chapter XI, & Commercial Lovelace.)

It must also be stressed that the fact that a carrier's operating ratio showed substantial improvement in the second quarter of 1983 does not mean that the carriers has solved its financial problems. (For example, Transcon, McLean, Mason & Dixon & System 99.) These carriers may have problems in obtaining the necessary financing for new equipment.

Even with the financial rebound in the second quarter of 1983 there were 10 of the 45 Large Class I unionized carriers that had both an operating loss and a net loss after taxes in that quarter. These 10 carriers employed 28,050 persons in 1981. In addition 2 carriers that were formerly listed as Large Class I carriers by the I.C.C. but who reduced operations also had an operating loss and a net loss after taxes in the Second Quarter of 1983.

Following are the 10 Large Class I unionized motor carriers of general freight who suffered an operating loss and a net loss in the Second Quarter of 1983 and their 1981 total employment:

	Carrier	1981 Total Employment
1.	Branch Motor Express	2,296
2.	Hall's Motor Transit	5,968
3.	IMFS (Interstate)	4,931
4.	Mercury Motor Express	315
5.	Pilot Freight	2,891
6.	IML Freight	2,727
7.	ICX (Illinois-Calif. Express)	2,009
8.	Lee Way Motor Freight	3,985
9.	Pacific Motor Trucking	2,022
10.	BN Transport	906
	Total	28,050

SOURCE: "Large Class I Motor Carriers of Property Selected Earnings Data" - June 30, 1983, I.C.C. & " 1981 Motor Carrier Annual Report - F & O S", ATA (for 1981 total employment).

B. TONNAGE HAULED - SECOND QUARTER 1983:

Despite the impressive performance of many of the Large Class I unionized motor carriers of general freight in the three months ended June 30, 1983, the financial recovery was accomplished without a significant increase in tonnage hauled. Table D.2 shows that in the second quarter of 1983 the 45 Large Class I unionized motor carriers of general freight, for which data is available, hauled 1.2% less tonnage than in the second quarter of 1982. For the year ended June 30, 1983, the same 45 Large Class I unionized motor carriers of general freight hauled 4.6% less tonnage than in the year ended June 30, 1982.

Of the 45 Large Class I unionized motor carriers of general freight, 24 or 53% had decreases in tonnage hauled between the 2nd quarter of 1982 and the 2nd quarter of 1983. Only 15 carriers or 33% of the 45 carriers had an increase in tonnage hauled between the years ended June 30, 1982 and June 30, 1983.

The decrease in tonnage hauled in the three months ended June 30, 1983 was not limited to the Large Class I unionized motor carriers of general freight. The Regular Common Carrier Conferences' survey of 163 motor carriers of general freight shows that tonnage hauled in the 2nd quarter of 1983 was 2.2% less than tonnage hauled in the 2nd quarter of 1982 (See Table D.3). Between the 2nd Quarter of 1979 and the 2nd Quarter of 1983 general freight tonnage hauled dropped by 40%.

Even more distressing than the failure of general freight tonnage hauled to participate in the general economic recovery are the comparisons made in Table D.3 with industrial production.

Using the Federal Reserve Board's Index of Industrial Production (1967=100) we find that between the second quarter of 1982 and the second quarter of 1983 industrial production actually increased by 3.5% while general freight tonnage hauled decreased by 2.2%. Between the second quarter of 1979 and the second quarter of 1983, general freight tonnage hauled decreased by 40% while industrial production fell by only 4.7%.

C. SUMMARY:

The majority of the Large Class I motor carriers of general freight represented by the IBT substantially improved their financial performance in the second quarter of 1983 but serious problems still remain to be solved:

1). A large minority of the unionized Large Class I motor carriers (10 of 45 carriers or 22.2%) had an operating loss and a net loss after taxes in the three months ended June 30, 1983.

2). Some carriers that had an operating profit and a net profit after taxes in the Second quarter of 1983 must still contend with weakened financial structures from several years of losses.

3). Tonnage hauled in the Second quarter of 1983 did not increase, on the average, for either the unionized Large Class I motor carriers of general freight or the entire general freight industry.

4). Without a large increase in tonnage the 47,577 persons who permanently lost their jobs when the 45 Class I & II regulated motor carriers of general freight terminated operations between July 1, 1980 and September, 1983 will not find employment in the industry.

APPENDIX D (Continued)

45 LARGE CLASS I MOTOR CARRIERS OF GENERAL FREIGHT UNDER NMFA OR OTHER IBT AGREEMENTS

SUMMARY TABLE 1

A. SUMMARY OF OPERATING RATIOS

	Years Ended June 30 1982	 1983	2nd Quarter 1983
TOTAL NUMBER OF CARRIERS IN REPORT:	45	45	45
NUMBER OF CARRIERS WITH OPERATING RATIO: 100.0 or higher:	26	19	10
99.9 or lower			
98.0 to 99.9	5	10	3
96.0 to 97.9	6	3	13
92.0 to 95.9	6	8	10
91.9 & lower	2	5	9
Total 99.9 or lower	19	26	36

B. CARRIERS REPORTING BOTH OPERATING LOSS & LOSS AFTER TAXES: SECOND QUARTER: 1983

		AMOUNT OF OPERATING LOSS	 LOSS AFTER TAXES
		($000 omitted)	
1.	BRANCH MOTOR EXPRESS	$954	$1,324
2.	HALL'S MOTOR TRANSIT	$813	$1,024
3.	IMFS (INTERSTATE)	$2,704	$3,676
4.	MERCURY MOTOR EXPRESS	$612	$338
5.	PILOT FREIGHT CARRIERS	$1,106	$1,601
6.	IML FREIGHT	$1,316	$1,869
7.	ICX	$509	$874
8.	LEE WAY MOTOR FREIGHT	$4,439	$2,259
9.	PACIFIC MOTOR TRUCKING	$869	$1,186
10.	BN TRANSPORT	$824	$898

TABLE D.1

LARGE CLASS I MOTOR CARRIERS OF GENERAL FREIGHT

UNDER NMFA OR OTHER IBT AGREEMENTS

		(A)	(B)	(C)	(D)	(E)	(F)
		Operating ratios			Profits (Loss) after taxes		Net Carrier Op. Income
		Years Ended June 30		2nd Quarter	2nd Quarter		
		1982	1983	1983	1982 ($000 omitted)	1983	2nd Q.1983
EASTERN DISTRICT							
1.	A-P-A TRANSPORT	83.6	81.7	78.0	+$1,795	+$2,358	+$4,778
2.	ASSOCIATED TRUCK LINES	102.6	99.0	103.1	($159)	($1,614)	+$1,199
3.	BRANCH MOTOR EXPRESS	105.5	105.7	103.1	($1,091)	($1,324)	($954)
4.	DUFF TRUCK LINES	101.8	103.3	97.5	($37)	+$233	+$343
5.	HALL'S MOTOR TRANSIT	105.2	103.1	101.8	($1,625)	($1,024)	($813)
6.	HOLLAND MOTOR EXPRESS	95.3	91.8	87.6 e	+$835	+$1,257	+$2,227
7.	HOLMES TRANSPORTATION	101.3	99.2	98.8 e	($245)	+$233	+$175
8.	IMES (INTERSTATE)	103.7	107.4	105.9 e	($2,421)	($3,676)	($2,704)
9.	JONES TRANSFER	103.8	98.0	92.0 e	+$10	+$1,008	+$1,150
10.	ONEIDA MOTOR	102.9	99.7	97.0 e	+$505	+$342	+$412
11	PRESTON TRUCKING	96.4	96.3	93.5	+$1,964	+$2,440	+$4,338
12.	RED STAR EXPRESS	94.8	90.2	86.6 e	+$1,053	+$1,405	+$3,227
13.	ROADWAY EXPRESS	92.8	91.2	89.0	+$19,033	+$22,819	+$31,095
14.	ST. JOHNSBURY	96.5	93.3	92.7	+$873	+$1,522	+$3,464
15.	SMITH'S TRANSFER	99.6	98.9	95.7	($524)	+$1,996	+$3,407
16.	YELLOW FREIGHT	98.2	95.1	90.5 e	+$4,671	+$14,902	+$24,854

D.1 (CON'T.)

	(A)	(B)	(C)	(D)	(E)	(F)
	Operating ratios--------------			Profits (Loss) after taxes		Net Carrier Op. Income
	Years Ended June 30		2nd Quarter	2nd Quarter		
	1982	1983	1983	1982 ($000 omitted)	1983	2nd Q.1983
SOUTHERN DISTRICT						
17. CAROLINA FREIGHT	96.0	93.9	91.7	+$1,770	+$3,024	+$6,187
18. MASON & DIXON LINES	100.5	103.5	97.8	($1,184)	+$345	+$806
19. McLEAN TRUCKING	103.2	102.5	97.1	($1,925)	+$5,791	+$3,920
20. MERCURY MOTOR EXPRESS	102.6	107.6	104.9 e/	($117)	($338)	-($612)
21. PILOT FREIGHT CARRIERS	103.6	104.5	102.3 e/	($1,162)	($1,601)	-(1,106)
22. RYDER TRUCK LINES	96.7	97.0	94.2 e/	+$2,878	+5,056	+$9,982
WESTERN DISTRICT						
23. ABF FREIGHT	100.1	100.2	97.8	($134)	+$1,247	+$1,839
24. AMERICAN FREIGHT	100.1	97.7	93.8	+$1,425	+$2,314	+$4,237
25. C.W. TRANSPORT	100.1	101.0	96.2	+$204	+$497	+$891
26. CAMPBELL 66	97.6	98.8	96.5	+$437	($40)	+$685
27. CHURCHILL TRUCK LINES	99.8	95.3	90.7 e/	+$486	+$716	+$1,678
28. CONSOLIDATED FREIGHTWAYS	93.5	92.9	89.8	$13,212	+$14,722	+$28,892
29. GARRETT FREIGHWAYS	96.1	95.6	93.3 e/	$610	$7	+$2,805
30. GRAVES TRUCK LINES	103.8	99.3	95.9	($418)	($383)	$715
31. I.C.X.	100.6	102.2	102.4	($964)	($874)	($509)
32. IML FREIGHT (Chapter XI)	104.8	105.3	104.7	($3,506)	($1,869)	($1,316)
33. JONES TRUCK LINES	93.7	93.9	92.6e	+$1,024	+$1,405	+2,731

D.1 (CON'T).

	(A)	(B)	(C)	(D)	(E)	(F)
	Operating ratios	Years Ended June 30	2nd Quarter	Profits (Loss) after taxes 2nd Quarter		Net Carrier Op. Income
	1982	1983	1983	1982 ($000 omitted)	1983	2nd Q.1983 (000 omitted)
WESTERN DISTRICT (CONT.)						
34. LEE WAY MOTOR FREIGHT	108.2	114.4	111.4	($2,205)	($2,259)	($4,439)
35. MILNE TRUCK LINES	101.4	102.7	99.3	($504)	($64)	+$138
36. MURPHY MOTOR FREIGHT	101.4	100.6	97.5	($181)	+$130	+$582
37. NORTHWEST TRANSPORT	91.5	88.6	88.6 e	+$1,152	+$1,002	+$1,839
38. P.I.E.	99.7	99.8	96.5 e	+$326	+$2,459	+$3,182
39. PACIFIC MOTOR TRUCKING	111.7	109.2	102.8	($3,385)	($1,186)	($869)
40. SANTA FE TRAIL	95.8	101.8	99.8 e	+$91	+$38	+$25
41. SCHNEIDER TRANSPORT	101.8	93.7	96.9	($235)	+$570	+$1,285
42. SYSTEM 99	102.7	99.7	93.5	($454)	+$717	+$1,104
43. TRANSCON LINES	102.2	100.4	97.4	($404)	+$1,083	+$1,846
44. BN TRANSPORT	100.6	104.3	104.9 e	+$250	($898)	($824)
45. ADVANCE TRANSPORTATION	98.2	98.0	96.5	+$226	+$321	+$510
AVERAGE / TOTALS	99.8	99.1	96.4	+$31,950	+$74,809	$142,402

e= estimated by IBT

SOURCE: "Large Class I Motor Carriers of Property Selected Earnings Data",
June 30, 1983, I.C.C.

Prepared by:
Norman A. Weintraub, Chief Economist & Director,
Department of Economics, IBT
October 17, 1983

TABLE D.2

45 LARGE CLASS I MOTOR CARRIERS OF GENERAL FREIGHT UNDER NMFA
OR OTHER IRT AGREEMENTS - SECOND QUARTER - 1983
TONNAGE & CHANGES IN TONNAGE HAULED - SECOND QUARTER 1983 & YEAR ENDED JUNE 30, 1983

TONNAGE HAULED
(000 omitted)

	EASTERN DISTRICT	2ND QUARTER 1983	2ND QUARTER 1982	% CHANGE	YEAR ENDED JUNE 30 1983	YEAR ENDED JUNE 30 1982	% CHANGE
1.	A-P-A TRANSPORT	108	105	+2.9%	424	422	+0.5%
2.	ASSOCIATED TRUCK LINES	488	497	-1.8%	1,915	1,849	+3.6%
3.	BRANCH MOTOR EXPRESS	310	340	-8.8%	1,222	1,476	-17.2%
4.	DUFF TRUCK LINES	185	189	-2.1%	684	757	-9.6%
5.	HALL'S MOTOR TRANSIT	289	442	-34.6%	1,661	2,182	-23.9%
6.	HOLLAND MOTOR EXPRESS	152	144	+5.6%	545	613	-11.1%
7.	HOLMES TRANSPORTATION	160	161	-0.6%	638	658	-3.0%
8.	IMFS, INC.	278	608	-54.3%	1,644	2,613	-37.1%
9.	JONES TRANSFER	300	285	+5.3%	1,038	1,069	-2.9%
10.	ONEIDA MOTOR FREIGHT	101	119	-15.1%	415	497	-16.5%
11.	PRESTON TRUCKING CO.	649	518	+25.3%	2,273	2,085	+9.0%
12.	RED STAR EXPRESS	170	174	-2.3%	680	694	-2.0%
13.	ROADWAY EXPRESS	1,099	1,173	-6.3%	4,733	4,804	-1.5%
14.	ST. JOHNSBURY	358	301	+18.9%	1,471	1,224	+20.2%
15.	SMITH'S TRANSFER	538	477	+12.8%	1,974	1,962	+0.6%
16.	YELLOW FREIGHT	1,103	1,088	+1.4%	4,201	4,392	-4.3%

TABLE D.2 (CON'T.)

45 LARGE CLASS I MOTOR CARRIERS OF GENERAL FREIGHT UNDER NMFA OR OTHER IBT AGREEMENTS - SECOND QUARTER - 1983
TONNAGE & CHANGES IN TONNAGE HAULED - SECOND QUARTER 1983 & YEAR ENDED JUNE 30, 1983

TONNAGE HAULED (000 omitted)

		2ND QUARTER			YEAR ENDED JUNE 30		
SOUTHERN DISTRICT	1983	1982	% CHANGE	1983	1982	% CHANGE
17. CAROLINA FREIGHT CARRIERS	447	416	+7.5%	1,838	1,820	+1.0%
18. MASON & DIXON LINES	392	334	+17.4%	1,510	1,570	-3.8%
19. MC LEAN TRUCKING	726	692	+4.9%	2,729	2,916	-6.4%
20. MERCURY MOTOR EXPRESS	140	157	-10.8%	526	614	-14.3%
21. PILOT FREIGHT	405	295	+37.3%	1,365	1,125	+21.3%
22. RYDER TRUCK LINES	1,291	1,403	-8.0%	5,286	5,652	-6.5%
WESTERN DISTRICT						
23. ABF FREIGHT	527	451	+16.9%	2,049	1,868	+9.7%
24. ADVANCE TRANSPORTATION	152	162	-6.2%	538	639	-15.8%
25. AMERICAN FREIGHT SYSTEM	395	380	+3.9%	1,558	1,565	-0.4%
26. B.N. TRANSPORT	122	126	-3.2%	445	508	-12.4%
27. C.W. TRANSPORT	262	236	+11.0%	942	1,037	-9.2%
28. CAMPBELL 66	152	148	+2.7%	585	669	-12.6%
29. CHURCHILL TRUCK LINES	126	113	+11.5%	464	463	+0.2%
30. CONSOLIDATED FREIGHTWAYS	1,109	1,136	-2.4%	4,398	4,401	-0.1%
31. GARRETT FREIGHTLINES	283	262	+8.0%	1,094	1,005	+8.9%
32. GRAVES TRUCK LINES	130	127	+2.4%	518	583	-11.1%

TABLE D.2 (CON'T.)

45 LARGE CLASS I MOTOR CARRIERS OF GENERAL FREIGHT UNDER NMFA
OR OTHER IBT AGREEMENTS - SECOND QUARTER - 1983
TONNAGE & CHANGES IN TONNAGE HAULED - SECOND QUARTER 1983 & YEAR ENDED JUNE 30, 1983

TONNAGE HAULED
(000 omitted)

WESTERN DISTRICT	2ND QUARTER 1983	2ND QUARTER 1982	2ND QUARTER % CHANGE	YEAR ENDED JUNE 30 1983	YEAR ENDED JUNE 30 1982	YEAR ENDED JUNE 30 % CHANGE
33. I.C.X.	141	145	-2.8%	591	668	-11.5%
34. IML FREIGHT	127	145	-12.4%	570	678	-15.9%
35. JONES TRUCK LINES	395	306	+29.1%	1,543	1,179	+30.9%
36. LEE WAY MOTOR FREIGHT	237	279	-15.1%	1,086	1,246	-12.8%
37. MILNE TRUCK LINES	142	113	+25.7%	555	523	+6.1%
38. MURPHY MOTOR FREIGHT	190	160	+18.8%	710	662	+7.3%
39. NORTHWEST TRANSPORT	80	91	-12.1%	358	410	-12.7%
40. P.I.E..	678	854	-20.6%	3,137	3,604	-13.0%
41. PACIFIC MOTOR FREIGHT	297	377	-21.2%	1,081	1,679	-35.6%
42. SANTA FE TRAIL	69	71	-2.8%	280	286	-2.1%
43. SCHNEIDER TRANSPORT	839	797	+5.3%	3,145	2,996	+5.0%
44. SYSTEM 99	95	92	+3.3%	370	424	-12.7%
45. TRANSCON LINES	397	351	+13.1%	1,487	1,366	+8.9%
TOTAL:	16,634	16,840	-1.2%	66,276	69,453	-4.6%

	2ND QUARTER	YEAR ENDED JUNE 30
# CARRIERS INCREASED TONNAGE:	24	15
# CARRIERS DECREASED TONNAGE:	21	30
	45	45

SOURCE: "Large Class I Motor Carriers of Property
Selected Earnings Data" June 30, 1983, ICC.

Prepared by: Norman A. Weintraub, Chief Economist &
Director, Dept. of Economics, IBT
October 17, 1983

TABLE D3

COMPARISON OF GENERAL FREIGHT TONNAGE & INDUSTRIAL PRODUCTION, BY QUARTER: 1978(1) to 1983(II)

YEAR & QUARTER		(A) Tons ($000 omitted)	(B) Index of Tons (1967=100)	(C) Index of Industrial Production (1967=100)
1978	I	41,233	122.0	139.6
	II	44,993	133.1	143.3
	III	43,318	128.2	147.8
	IV	47,374	140.2	149.5
1979	I	45,800	135.5	151.4
	II	40,702	120.4	151.4
	III	40,963	121.2	152.1
	IV	42,807	126.7	152.2
1980	I	34,557	102.2	152.1
	II	30,886	91.4	144.8
	III	31,042	91.8	141.5
	IV	39,927	118.1	148.9
1981	I	33,926	100.4	151.6
	II	33,272	98.4	152.7
	III	31,597	93.5	152.7
	IV	32,686	96.7	146.4
1982	I	26,325	77.9	141.0
	II	24,984	73.9	139.4
	III	25,595	75.7	137.8
	IV	28,567	84.5	135.3
1983	I	23,644	70.0	138.1
	II	24,438	72.3	144.3

Percent Changes

	(A)	(B)	(C)
II Q 1979 to II Q 1983:	-40.0%		-4.7%
II Q 1980 to II Q 1983:	-20.9%		-0.3%
II Q 1982 to II Q 1983:	-2.2%		+3.5%

(A): Tons of general freight as reported in "Quarterly Operating Results of the Motor Common Carriers of General Freight - 2nd Quarter 1983", Economic Research Committee of the Regular Common Carrier Conference.

(B): Column A converted to index numbers, quarterly average for 1967, by IBT Economics Department.

(C): Federal Reserve Board Index of Industrial Production (1967=100) as published in "Quarterly Operating Results of the Motor Common Carriers of General Freight - 2ND Quarter - 1983", Economic Research Committee of the Regular Common Carrier Conference.

NOTE: RRCC included 168 carriers in sample for Second Quarter of 1983, includes unionized & nonunion carriers of general freight.

SOURCE: "Quarterly Operating Results of the Motor Common Carriers of General Freight, 2ND Quarter 1983, Economic Research Committee, Regular Common Carrier Conference."

Prepared by:
Norman A. Weintraub, Chief Economist &
Director, Department of Economics
October 17, 1983

[Short recess.]

Mr. **Anderson**. Please proceed.

TESTIMONY OF JACKIE PRESSER, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ACCOMPANIED BY MARY ANN KEEFFE, DIRECTOR OF RESEARCH; NORMAN WEINTRAUB, CHIEF ECONOMIST; ROBERT BAPTISTE, CHIEF LABOR COUNSEL, AND R. V. DURHAM, SAFETY AND HEALTH DIRECTOR

Mr. **Presser**. Thank you, Mr. Chairman.

Accompanying me today are Mary Ann Keeffe, director of research department. Also, our economist, Mr. Norman Weintraub; Mr. Robert Baptiste, our legal counsel, and Mr. R. V. Durham, our safety and health director.

Mr. **Anderson**. Thank you.

Mr. **Presser**. Mr. Chairman, I would like to thank you for extending this invitation to me to appear before your committee. While I deeply appreciate the opportunity to testify as to the experiences of the Teamsters Union under deregulation, I just as deeply regret that I cannot bring better news.

The Teamsters opposition to passage of the Motor Carrier Act of 1980 is no secret. Many others in the trucking industry opposed it as well. Congress, however, over our objections and despite our dire predictions, gave its approval to that bill. Every year since then, we have come before this committee and one in the Senate to recount the disastrous consequences this legislation has brought to the trucking industry and our union. The devastation continues.

Mr. Chairman, like you, I, too, am a representative. The members of this union are my constituents, and when they suffer, it is my solemn responsibility to do something to alleviate that suffering.

I am not here to say, "We told you so." I am not here to engage in an academic debate over whether deregulation or the recession is the paramount factor behind the chaos in the trucking industry today. And I am not here merely to recite an array of statistics and studies.

I am here, Mr. Chairman, to talk in human terms about what is happening to the people I represent and to the industry that they built into the finest transportation system in the world. I am here to ask you to assist me in helping those of our members who are rapidly losing hope.

The trucking industry today has regressed to the instability and uncertainty that prevailed before 1935. As we did then, we are again witnessing a nightmare version of Adam Smith's free market dream. Massive unemployment, arbitrary service disruptions, and multiplying bankruptcies are the order of the day. Nearly 300 carriers have gone under or are about to. Cutthroat competition and predatory pricing are becoming characteristic business practices among the survivors. Vehicle maintenance and labor costs are being cut to the detriment of the public's safety. Small carriers are disappearing. Others briefly take their place, operating on a shoestring. Small shippers and communities confront rate and service discrimination. What else can be expected when the only market incentive is simply to survive?

The nightmare has not spared the Teamsters.

I have the third in a series of layoff surveys conducted by our economics department with me here today to present to the committee, and it contains, in exhaustive detail, the facts as Teamsters have felt them. That survey shows that unemployment among our membership in trucking has increased to 32.5 percent, up for the third year in a row since deregulation.

Our survey went even farther this year. We learned that few of our laid-off members have found other employment within the jurisdictions of their local unions and that it is unlikely laid-off workers covered by this survey obtained other employment at all in establishments covered by our local unions' collective bargaining agreements.

I have two other IBT surveys with me today that I am also submitting for the record, and which describe the impact of the last 3 years on the Teamsters Union.

A recent study conducted by our legal staff reveals that the Teamsters have been involved in 20 major class I carrier bankruptcies since enactment of the 1980 legislation. Several of these companies are continuing to operate at reduced levels, but 13 of the 20 have been forced to liquidate their assets. In many of these cases, the company has failed, even though our members made wage concessions ranging from 10 to 30 percent of basic wages. The bottom line is that 25,000 Teamsters have permanently lost their jobs.

Many carriers who have narrowly avoided bankruptcy have had to close their terminals, lay off most of their workers, and discontinue service to small shippers. Desperately struggling to survive, they now only haul truckload quantities between major points for large shippers. The new, smaller, and less-well-financed carriers have been unwilling and unable to make up for the lost service.

The other study I have with me today is one conducted by our research department of declining less-than-truckload service in selected communities. The results are disturbing. For many areas, the loss of service has been serious. In Philadelphia, for example, the city has experienced a 30-percent net decline since 1980 in the number of terminals servicing the city. Likewise, Boston, Cleveland, Kansas City, and Pittsburgh all have had double-digit declines in the numbers of terminals servicing those cities.

The problem appears even more exaggerated for smaller communities. Some small towns have lost all of their terminals. Others show significant declines. In my own home State of Ohio, every large city but one has experienced substantial declines in terminal operations since 1980.

What do these statistics mean? I am not an economist, nor am I a statistician, but in human terms, the meaning is all too obvious. I am confronted with a barrage of calls from laid-off workers every day. I am hearing desperate pleas for help and stories of family tragedy from people who want nothing more than to be able to make a decent living for themselves and their children—people who used to be able to do just that.

Mr. Chairman, there are serious and often critical health concerns confronting our unemployed membership. What happens when you have a sick child with a chronic condition that needs continual treatment, but your health benefits have run out? Where do you go when hospitals and doctors refuse to treat you because you cannot pay their fees? Where is your hope when you have lost everything you have worked for because of the costs of a catastrophic illness?

The problem does not end with such unfortunate tragedies as these. Health authorities have clearly documented a link between extended periods of unemployment to increases in a broad range of emotional and physical disorders, including family disturbances, child abuse, and alcoholism.

The working men and women who are covered by the National Master Freight Agreement have some of the best health care plans in the country. But no plan can continue to protect workers when the membership is unemployed and contributions to the plan cease.

Another critical problem affecting many of our members is the loss of their pensions. There are numerous examples of Teamsters who have lost their entire pensions when the carrier they were working for went out of business. In many cases, these men and women were just a few years short of receiving their pensions—now they face their retirement years without a single penny in benefits.

For our younger members on layoff status, unemployment benefits are quickly running out. For many, they already have. This is not surprising when you consider that nearly half of our unemployed members in general freight have been out of work for over 1 year.

Mr. Chairman, we are in danger of permanently scarring an entire generation of trucking industry workers. Once proud over-the-road drivers and terminal operators are now struggling to make ends meet, scrimping to make car and mortgage payments, scraping to put food on the table, and forgoing needed medical treatments.

Their faith in the American dream has been shattered as they have watched their lives and livelihoods crumble around them. They ask me, and I ask you, Mr. Chairman, why? What has caused such suffering and disarray in a formerly stable and dependable sector of the American economy? Why were now-bankrupt carriers able to ride out previous recessions, but not the most recent one? And, they want to know, is there any hope in sight?

Granted, the recent recession, which seems to be behind us now, was particularly severe and hit many U.S. industries hard. But only the willfully blind would deny that deregulation has been an aggravating, if not leading, factor in causing much of the pain and hardship which I have just described and which has not been lifted by the recent economic upturn.

At the outset of my remarks, I said that I did not come here today to debate the "deregulation versus recession" issue. Nevertheless, I would like to at least refer your attention to a recent study prepared by an independent firm, Data Resources, Inc., for the International Brotherhood of Teamsters, which measures the impact of regulatory change on truck tonnage. That study, which I submit for the record, indicates that deregulation and other factors, aside from the recession, have been responsible for nearly half the decline in class I and class II motor carrier tonnage since 1980.

But that really isn't what is at issue here. Besides, after 3 years of a deregulated environment, I know there is little to be gained by asking for repeal of the 1980 Motor Carrier Act. What I do ask is that the law be responsibly implemented. In a seeming attempt to demonstrate its deregulatory fervor, the Interstate Commerce Commission has far exceeded the powers vested in it by the 1980 law and frustrated the intent of this body when you passed that bill.

The fact is, Mr. Chairman, that while it was the House version of the 1980 bill which was signed into law, it is the Senate version which is presently being enforced by the executive branch. I feel certain that back in 1980, you did not contemplate that illegal and discriminatory rates would be condoned, that there would be no discernible policy toward ratemaking, that public need and fitness tests would be abandoned, and that common carrier obligations to service would be suspended. Yet, these actions have been taken by the ICC and are contributing to the deteriorating conditions of the trucking industry. By whose authority has the ICC relieved itself of its statutory duty to administer the law as it was written by Congress?

I sincerely hope that one result of these oversight hearings will be to put the ICC back on track toward a fair and evenhanded administration of the law. For the ICC has found solace, if not encouragement, in the passivity of Congress.

Mr. Chairman, the Teamsters Union is continuing to make a sincere attempt to adapt to the deregulated environment. Across America, we have been doing whatever we can to aid our unemployed members. In my own home State, the Ohio Conference of Teamsters Service Bureau provides all kinds of assistance to over 100,000 members. We have set up food kitchens in Detroit and referral services in California. We have sought to work with both management and government to bring order out of chaos and restore hope to the desperate.

I come before you today to tell you that the Teamsters cannot do it alone. We need your help. We have not forgotten the congressional promise at the time of its passage, that if the Motor Carrier Act of 1980 harmed our membership, we could win redress for them.

Mr. Chairman, I am aware that your responsibilities are many, and that the demands on your time and attention are extreme, but when 100,000 people have been legislated out of their jobs, the time for redress is now.

There are several things that I believe the Congress can and should do to improve conditions for the motor carrier industry and our members who work in that industry.

First, Congress should direct the Secretary of Transportation to establish a job referral bank as required by section 3(a) of the Motor Carrier Act; second, Congress should require the ICC to determine public need and carrier fitness as a precondition to approval of grants of operating authority; third, in order to safeguard the public interest in common carrier service obligations, Congress should direct the ICC to establish constant monitoring procedures to determine whether carriers are indeed meeting such obligations;

fourth, in order to further public safety, Congress should immediately pass legislation requiring the Secretary of Transportation to establish the minimum financial responsibility level at $750,000, a provision which was included in the 1980 act; fifth, Congress should take a long, hard look at providing health insurance for the unemployed—our members need it; sixth, Congress must remedy the substantial defects in our bankruptcy laws. During the recent congressional hearings on airline bankruptcies, it became clear that companies are exploiting the bankruptcy laws in order to evade their collective bargaining obligations. Though it has not received the same amount of publicity, the same potential for abuse exists in the freight carrier sector.

Finally and most importantly, Congress should recognize the present disarray and dislocation in the trucking industry and resolve to put off any proposals for further deregulation.

In conclusion, Mr. Chairman, let me say this. All the Teamsters are asking for is equity. We do not want special favors, but we do want to preserve the trucking industry in America. In 1980, regulatory reform of the trucking industry was an issue on which reasonable men and women could disagree. But in 1983, only the callous and irresponsible can deny the pain and suffering that deregulation, along with the recession, has brought to thousands and thousands of Americans. I appear before you today because it is my sworn duty to help those Teamsters who need help. It is yours as well. Together, I believe that we can overcome the problems which I have described to you today. Together, we can put unemployed Americans back to work in a strong and vital industry.

Thank you.

Mr. ANDERSON. Thank you, Mr. Presser, for your statement.

Mr. ANDERSON. Mr. Weintraub, you submitted a statement. Do you wish to make further comment?

Mr. WEINTRAUB. Yes, Mr. Chairman.

Mr. ANDERSON. And your full remarks as they are presented will be made a matter of the record.

Mr. WEINTRAUB. Thank you.

I would just want to add to our general president's statement that our survey this year was made for April 1983 of 36 representative local unions, and it is the third time that we did a survey of the regulated general freight motor carrier industry.

We were able to estimate, based on that survey, that about one-third of our membership in general freight was out of work and on layoff. About one-third of those people, over 30,000, were in carriers that permanently closed operations. Since April, as Dr. Silberman testified to this morning, there has been what I would call a financial recovery of some of the carriers in the industry. The second quarter financial results for many of the large carriers were quite good. However, I would like to stress that the tonnage figures for the largest 45 unionized carriers in general freight for the second quarter of 1983 are below—about 1 percent below—the first quarter of 1983.

Of the 45 largest carriers 10 had a loss in the second quarter, in both operations and net after interest. The recovery was not widespread; it did not include all the carriers.

Unless the tonnage comes back to the carriers in a very substantial way, I do not see the 30,000—at least 30,000 people who permanently lost their jobs when the Spector-Red Balls, the Maislins, and other large companies, completely terminated operations—getting their jobs back in the trucking industry in the foreseeable future.

As it is now, tonnage is at least 40 percent below what it was in 1979. Our representative locals, several of them reported that over half their people were on layoff for over 1 year. Some have been on layoff for over 2 years.

In order to bring the people back to work, it will require a very substantial recovery in the general freight industry.

Thank you, Mr. Chairman.

Mr. **ANDERSON**. Thank you, Mr. Weintraub.

Mr. Presser, you state that Teamster unemployment in the regulated sector of the trucking industry is about 30 percent. How does that compare to overall unemployment in the industry?

Mr. **PRESSER**. It would be much larger with the people that we do not represent. In the Teamsters Union, you would find that there is a tremendous amount of work force that we do not represent, such as the office people, the marketing people, the salespeople, the telephone operators, and many other types of people. We feel that there are probably an additional 100,000 people who have lost their jobs that we do not represent in the trucking industry because of closing of terminals.

We also realize that where terminals close in communities, those communities lose tax advantages, because there is no longer a tax base being paid by the companies who are no longer in that area. There is a direct effect in many small communities where trucking companies once operated. In the State of Ohio, we lost 88 trucking companies in a year-and-a-half period, and they have not recovered from that to this day.

Mr. **ANDERSON**. Would the overall unemployment in industry be higher or lower than the 30 percent?

Mr. **PRESSER**. Much higher.

Mr. **ANDERSON**. It would be higher than 30 percent.

Mr. **PRESSER**. Much higher.

Mr. **ANDERSON**. Do you have any data to show whether or not any of these members have acquired employment in other segments of the trucking industry?

Mr. **WEINTRAUB**. Mr. Chairman, we had the same question last year when the General Accounting Office made a critique of our layoff study, and we said it was beyond our local unions' resources to track what has happened to 100,000 people. It really would require a scientific sample, and we proposed that some agency of Government should conduct this study. And the Teamsters offered their complete cooperation and of the local unions to do such a study with the Government, but to date, no Government agency has approached us to do a study of unemployment or length of unemployment in the trucking industry.

Mr. **ANDERSON**. Now, Mr. Presser, you expressed concern about the safety implications of smaller, often poorly financed carriers, and an older truck fleet. Do you have any data that would reflect any deterioration in the safety record of these carriers?

Mr. **Presser**. We most certainly do, and I would like to direct the answer to come from the director of our safety and health department, Mr. Durham.

Mr. **Durham**. Mr. Chairman, if you look at the Bureau of Motor Carrier Safety data that actually shows accidents and fatalities are decreasing, the problem is the BMCS data—and they will concede themselves—is gathered from, basically, a volunteer reporting system. They do not get many of the accident reports that are supposed to be reported on any fatality or any property damage over $2,000. We see a very serious trend developing. In the past 2 weeks, I have spoken directly with two very large carriers that are not making money, that are in serious trouble, and now that they see that the economy is now beginning to rebound, they do not have any capital to purchase equipment. Their equipment is worn out. So they are searching for ways to lease equipment.

The type of information that we are receiving through our affiliates at our office here in Washington is that we have equipment that is aging; we have carriers that have practically discontinued their pretrip or preventive maintenance programs; they have laid off staff. We get mixed results when we start asking them what are their accidents per million miles traveled. It is a situation that I met with the Secretary of Transportation recently on and asked them to expand, to try to get at the question that you are trying to get at. They have what they call the fatal accident reporting systems, or FARS, where all fatal accidents are investigated. And we have asked the Department of Transportation to expand that investigation to include what type of carrier was involved in that fatal accident, whether it was a new entrant or one that has been in business for some time, and what type of safety program, et cetera, they have. And we suspect that once they do this, we are going to really begin to see the problem for what it is.

Your 10 large carriers that an earlier speaker addressed or spoke to, sure, they can maintain their preventive maintenance program, they can maintain their safety program, because they are the ones who are making the bucks. But the other hundreds or thousands of carriers are just not doing it, and the equipment is worn out. And as I mentioned, last week, I spoke with a major carrier, and they admitted that their equipment is worn out, but they have no money to purchase new equipment.

One other comment, Mr. Chairman. I would like to follow up on an earlier question. I am one of the 36 locals that participated in this survey by Mr. Weintraub. I also wear another hat as president of a local in North Carolina with approximately 10,000 members. We participated in that study. And in response to the question you asked about the percentage of layoffs in the industry, in April 1983, the layoffs in our local in the freight industry was 40 percent. We represent industrial plants, breweries, dairies, and bakeries, and our unemployment rate in those industries is pretty much in line with what the State unemployment average was. So we see a wide disparity in the unemployment rates in the trucking industry as opposed to other industries.

Mr. **Anderson**. Mr. Shuster.

Mr. **Shuster**. Thank you, Mr. Chairman.

Gentlemen, we certainly appreciate your testimony today.

You spoke of the DRI study, which indicates that one-half of the decline in freight is due to the act. Where has that freight gone—to other modes, or to other carriers?

Mr. **Presser.** I would presume that the major carriers have absorbed and captured most of the freight because of the financial security that they have, and the predatory rates that they establish by being able to cut the market rate puts these small carriers and the financially insecure carriers, of limited financial resources, at a direct disadvantage. We see the growth of many of the majors and the medium- and small-sized carriers are disappearing from the marketplace.

Mr. **Shuster.** With regard to many of the bankruptcies, staff has pointed out to me that the ICC testified before us last year that at least some of the bankruptcies were companies which were in trouble in the mid-1970's. I think Wilson went into bankruptcy in 1978, perhaps——

Mr. **Weintraub.** No. In 1980.

Mr. **Shuster.** But I guess the ICC testified that they were in big trouble long before the act was passed. And do you believe that these bankruptcies are largely due to the act, or do you believe that, at least in some cases, the bankruptcies were on the way before the act?

Mr. **Presser.** In 1978, Wilson Motor Freight, in Mansfield, Ohio, had a terminal with 700 people. In 1979, they went up to 1,100-some people. And in 1980, they began to see the decline of that trucking company.

Mr. **Shuster.** As I understand your testimony, you are saying—and I certainly do not want to put words in your mouth, so please, disagree with me——

Mr. **Presser.** I am saying there was a tremendous impact and the creation of a disastrous effect on Wilson Motor as well as many other carriers, once the deregulation became a reality.

Mr. **Shuster.** Yes. Let me get to another point now, if I might. Am I correct that you are testifying that you believe the ICC is not interpreting and enforcing the act properly, and that you can live with the act, but you cannot live with the way the ICC is improperly interpreting it?

Mr. **Presser.** I am saying that we can exist with the act, but we cannot survive with the way the ICC is implementing the act itself.

Mr. **Shuster.** All right. One final point. On page 11 of your testimony, Mr Presser, you refer in the last paragraph at the bottom—

> Congress should pass legislation requiring the Secretary of Transportation to establish the minimum financial responsiblity level at $750,000, a provision which was included in the 1980 act.

I am afraid I do not—that is correct, that is in the act, that is the law today—but I do not understand the point.

Mr. **Durham.** Yes, let me respond to that. In the 1980 act, it provided for the $750,000 minimum, $1 million on some hazardous goods, and $5 million on others. Unfortunately, the act also provided that the Secretary of Transportation could reduce that for a period of 2 years. They did just that. We commented to the docket——

Mr. **Shuster.** But they could not reduce it below $500,000.

Mr. DURHAM. They reduced it to the $500,000 and the $1 million. There is no $750,000 and there is no $5 million. OK. And then, in the Surface Transportation Assistance Act of 1982, they extended that another year and a half. We see this, Congressman, as a very serious problem, and what is a real glaring loophole there is that private carriers are exempt, and as you know and I know, it makes no difference whether you are hit by a 80,000-pound truck hauling regulated freight, or hauling chickens. We see that as something that, certainly, we would appreciate this committee reviewing.

We have problems twofold. One is the reduction which has been made and has been extended by STAA of 1982, and second, Congressman Shuster, is the problem of the private carriers not being included in this law.

Mr. SHUSTER. Well, thank you very much. As I think perhaps I am the only Member of Congress who was once a member of the Teamsters, I especially appreciate your testimony.

Mr. ANDERSON. Mr. Albosta?

Mr. ALBOSTA. Thank you, Mr. Chairman.

I want to thank the panel for being here today. I certainly appreciate your participation in this hearing and in helping this committee try to reach some resolution to what may be a problem with the way deregulation is affecting a lot of areas around the country.

I am certainly one who is concerned, very concerned, about what is going to happen to the trucking industry, particularly in the rural, less-populated areas of the country, simply because that is the kind of area that I represent. I am also concerned about what happens with the trucking industry when it comes to other vital areas of the country, because that also is going to have some effect on what happens up in my district or my area of the State of Michigan.

I would like any one of you to give me some type of an answer as to how you might see the trucking industry being affected in the rural areas, maybe compared to what might be happening in other areas. Is it the same—is it worse—or what is your viewpoint pertaining to that?

Mr. PRESSER. Our records indicate that the rural areas are being penalized more severely than the metropolitan areas. There is a much higher cost factor for receiving and shipping in the rural areas, and in some instances, it is practically impossible to depend on credible service.

Mr. ALBOSTA. Well, we have noticed that there is a problem developing in our rural areas of the country, and I am sure that we are going to be looking for some way to make sure that the services that should be provided are provided there in those areas, and we certainly appreciate the concern that you have and hope that we can work together to come up with a reasonable answer.

I thank you for your comments, and I do not have any further questions, Mr. Chairman.

Mr. ANDERSON. Mr. Moody.

Mr. MOODY. Thank you, Mr. Chairman.

I would have the reverse question—in fact, it will sound like a very dumb question. Why should the rural areas be subsidized by the urban areas? If the cost, as you say, is very high in the rural areas, why shouldn't they pay the full cost? Why should rates be set that, in effect, shift some of the burden of that cost onto the urban areas? In other words, if an area is a high-cost delivery area, well, then, why not so be it? People want to live there, and there are costs associated with living there.

As an urban legislator, I would worry about the flip side of Mr. Albosta's question, I guess.

Mr. PRESSER. Well, under the regulatory system when it was in existence, the regulatory system provided that there be a regulatory system for picking up and delivery, and the permits that were issued to the carriers provided that each carrier would service an area jointly, and that provided everybody the proper service and a fair price for living in the rural area. You may describe a rural area as something like 8 or 10 miles out of the metropolitan city. There are many suburbs within 30 miles of a major city that are no longer enjoying a slight increase above the normal increase, but are paying a heavy penalty for living within 20 or 30 miles of a major metropolitan city.

Mr. MOODY. I guess my question really is, is it a penalty if it is just based on actual cost? Why is it called a penalty if it is cost-based?

Mr. PRESSER. Because prior to deregulation, the system provided that all costs would be absorbed through the regulatory system. They abolished that. The trucking companies are charging at will for people who live within 10 miles of a metropolitan city. It is true that there are not vast shipments of goods going in and out of a small community, but that small community must still be serviced. They live in the same county.

Mr. MOODY. In Wisconsin, we have had a State deregulation of trucking, and I am somewhat familiar with it, and I was involved with it. But what it seems to have done there is make deliveries to the rural areas less frequent which, for perishable goods, is not healthy, I agree with you, but for a lot of shelf items for the local, main street merchant, it is not too bad to have a less-frequent delivery. But what it has done, as I think you would agree, is it has raised the cost of delivery in the rural areas.

But I would go back to my basic question: If it costs more to deliver a package in a sparse area that if flung out than it is in a compact urban area, shouldn't the recipients of that package pay a little more in the rural area? I guess that is my basic question.

Mr. PRESSER. Again, I will say that a little more is understandable, but in this case, there are excessive abuses.

Mr. MOODY. You feel it is price gouging, then?

Mr. PRESSER. That is exactly right, yes.

Mr. ALBOSTA. Would the gentleman from Wisconsin yield, just for a brief explanation?

Mr. PRESSER. Certainly.

Mr. ALBOSTA. I certainly do not want to get into any long debate on the issue of urban versus rural. But I think first of all we ought to start out with some type of scenario. I think we are all in the same boat, and we are all in the same country, and we have to find a way to make one part of the country have opportunities to prosper, just as other areas of the country do. Certainly, those things that we do in terms of the mail delivery—it certainly does not take 20 cents to deliver a letter a mile from the post office, but it would take $1.50, perhaps, to deliver that letter out in the rural areas. And I think the Government has the responsibility to see that those services are provided. The limits of that responsibility I think, are debatable, of course, but I believe we are all in the same boat, and we are all hoping we can find ways to make opportunities available to everyone, no matter where they choose to be—not that one should have to greatly subsidize the other, but I think that it is the responsibility of government in trying to establish what is fair and reasonable. And I would hope that when I vote on those things that pertain to the urban areas, things that do help those urban areas, that the understanding would be that there is also cooperation needed when it comes to those things that help those areas of the rural parts of the country.

Let me also point out to the gentleman from Wisconsin that we could not deliver the food that you need in the urban areas if we did not have a transportation system that provided us the means of doing it. We would be in the same kind of situation the Soviet Union is in, and we would be looking to the importing agricultural commodities rather than the exporting of agricultural commodities if we did not have that system.

So again, I think that—not to belabor it—but to just simply say that I have times when I have to bend and yield to areas that do not necessarily benefit me, and I have to do it in my best conscience for the urban areas: I would hope the gentleman from Wisconsin would also be able to weed out and sift out all of the areas that may not benefit him and that still would be beneficial to the country.

Thank you.

Mr. MOODY. Do I have any more time, Mr. Chairman.

Mr. ANDERSON. Yes. Go ahead.

Mr. MOODY. I would agree with most of what Mr. Albosta said. On price gouging, do you have some evidence that there are monopolistic practices going on in rural areas; that truck companies are hurting rural areas by overcharging above cost—above and beyond their actual cost? Do you have some evidence like that?

Mr. PRESSER. What we have is reports from our local unions. And I do not know how you would establish above cost. A common carrier's obligation—given the permits and licenses to operate under the regulatory system, it was part of their obligation on receiving the permits and licenses as a common carrier to service all of the areas that they were allocated the permits for. After deregulation, the price structure changed considerably. Our people, the people who do live in rural America, who belong to our local unions—and many families have written or requested from their local unions assistance in receiving, being able to ship, and most assuredly, try to find some relief in the excessive costs that are being implemented by many people in the trucking industry today. I do not have the statistics on that, but I am sure that some of our locals could provide from Michigan, from Wisconsin, and probably other areas, what we just reported here today.

Mr. MOODY. Let me ask you, if a company is doing that, they are excessively pricing, with a big markup above cost for their rates, and with deregulation, with entry and exit to the market for truck companies being relatively easy, why wouldn't another company come in and ship the goods at a slightly lower price and scoop up that profit that is there? I mean, what is going on—maybe you can explain to me what is happening. If we have excess profits being made, and now we have free entry, what is happening to prevent competition coming in and——

Mr. **PRESSER**. I think that at one point after the Deregulation Act was in force, there was an influx of a lot of trucking people who were independent truckers. It suddenly became quite apparent that with insurance costs and operational costs they just could not survive. And at one point, you will find that the big trucking industry of the United States is rate-cutting at this very time, in all of the major markets, and there is not enough in the smaller markets for people to go in and make a living or run a company just by delivering or picking up products in a rural area. I do not believe that it would pay for anybody to do that.

Mr. **MOODY**. OK, thank you very much.

Mr. **WEINTRAUB**. If I could add, Mr. Moody, on the entry, it is true that there have been 10,000 new carriers. However, we only know of one new, less-than-truckload carrier, and that is not completely new—Leaseway Transportation. There are substantial barriers in an economic sense, capital barriers, to creating a sufficient and efficient less-than-truckload company. In fact, a prior general president has been reputed to say that in several years—he said it 20 years ago—there would be only 5 to 10 large, less-than-truckload companies in the industry. And the Motor Carrier Act has accelerated this trend. Unless the ICC properly implements the act, I think you will see substantial increases in prices to rural communities because on a less-than-truckload basis, it would be very hard for a new company to get in there.

Mr. **MOODY**. Thank you.

Mr. **ANDERSON**. Questions, Mr. Kolter?

Mr. **KOLTER**. Thank you, Mr. Chairman.

In the interim between the last vote on the floor and my presence here again this morning, I made several phone calls to new truck sales in my district—two of them—and in both cases, they claimed that there is a definite improvement in the sale of new trucks to the independent truckowners. In addition, I found out that a major truck manufacturer has fallen at this point in time—it will be the beginning of the second quarter of next year before you could pick up a truck.

Are these figures indicative of the information you have?

Mr. **PRESSER**. I think we can substantiate that there have been more independent truck bankruptcies since the implementation of deregulation than any other time prior to that act. I would not question whether or not truck sales are up or down. I had an opportunity to meet with Leaseway, which is the largest purchasing company of General Motors, just this past week, and they are at this time replacing their old equipment and adding new. I cannot dispute whether or not truck sales are up. I know if you come over to Ohio, you can buy all the equipment you want, on lots, that has been taken back by the banks for nonpayment. And there are many, many areas in my State and in Michigan, as well, where the bankruptcy courts have put the stuff up for sale. Some of it is practically new equipment.

Maybe Mr. Durham would have some statistics.

Mr. **Durham**. Congressman, what you have is a situation where there is a lot of existing equipment. For example, in Transport Topics in the last edition, you will find where Spector, which is one of our large carriers, employing about 6,000 teamsters, went backrupt since deregulation. They were attempting to lease the equipment. They cannot sell it. Why is that? The reason is, under the Surface Transportation Assistance Act of 1982, they increased the size of the trailers to 48 feet from 45, and the width from 96 inches to 102 inches. So, as a result of that, the carriers that still have any money or credit to buy equipment are going after the larger equipment.

The experts in the industry seem to suggest that the LTL carriers, unless they can get their mix of about 75 percent twin-trailer operation, they are not going to be able to make it. So the information you are receiving is correct. What happened is the heavy truck sales fell to something like 70-some thousand units per year, which was an alltime low. Now, as the economy is rebounding and the carriers, like the Yellow's and the Roadway's and CF's, which have the bucks, are making a mad rush now to buy this equipment, so as a result, it does overtax, I guess, the production capacities of the Mack's and the GMC's and the various truck manufacturers. A number of them had shut down their assembly plants as a result of the sales being so low, but it is kind of a unique situation, and you were correct in the report that you were getting.

Mr. **Kolter**. Well, I was hoping against hope that this was a good sign, because in my little corner of Pennsylvania, we have had an alarming number of small carriers who have gone out of business, and an alarming number of unemployed truckdrivers, and I was just hoping that there was something that was coming around the corner.

Mr. **Durham**. The problem, as I described earlier, is one carrier that is very large is trying to survive by going with what they call an ESOP plan, an employees' stock option plan. They readily concede they do not have the money to purchase equipment. They are hoping that they can lease equipment for the next 2 to 3 years until they can somehow or another survive. This particular carrier employs somewhere close to 3,000 Teamsters. It is a sad situation we find ourselves in, that the carriers have equipment that is worn out. The data research study, and I understand other speakers verified, that the equipment is very old, and this presents safety problems for us out there on the highways, as well as breakdowns on the highway.

Mr. **Kolter**. Thank you.

Mr. **Anderson**. Well, thank you very much, Mr. Presser, Mr. Weintraub, Mr. Baptiste, Mr. Durham, and Ms. Keeffe, for your presentation.

Mr. **Presser**. Thank you, Mr. Chairman.

Mr. **Anderson**. At this time, we have a panel consisting of the Private Carrier Conference, George Edwards, the vice president, representing them; the Interstate Carrier Conference, with Byron Raznick, president; and for Private Truck Council, Richard Henderson, executive vice president; and finally, Grant M. Davis, Harris professor of transportation, University of Arkansas.

We do have the prepared statements of Mr. Edwards, Mr. Raznick, Mr. Henderson, and Mr. Davis, and all of those prepared remarks will be made a part of the record at this point.

[Statements referred to follow:]

STATEMENT OF GEORGE L. EDWARDS

I am George L. Edwards. As an Officer of the Private Carrier Conference, Inc., an affiliate of the American Trucking Associations, Inc., I am very pleased to submit this statement for the record in conjunction with the annual oversight hearings of this Committee called for by the Motor Carrier Act of 1980. It has been over three years since the 1980 Act was signed by former President Carter on July 1, 1980. Since that date there have been many changes affecting private carriers growing directly out of the Motor Carrier Act of 1980. These changes have been very favorable. I would like to summarize them for you so that you will be able to better gauge the impact, through the oversight process, of the 1980 Act in so far as it has affected to this date the interests of the nation's private carriers.

To better understand the changes which have occurred, it is important to note that from the time the Motor Carrier Act of 1935 was enacted to July 1, 1980 when the Motor Carrier Act of 1980 was enacted there was an astounding growth of private carriage. In large measure, this was symptomatic of an overregulated motor carrier system because shippers (which, indeed, private carriers are in essence) found it increasingly attractive from the standpoints of both service and transportation costs to do a considerable amount of their own trucking on a proprietary basis. With the introduction of very substantial marketplace competition through the 1980 Act, which codified in many respects reforms initiated by a very progressive Interstate Commerce Commission in the late 1970's, those shippers wishing to be private carriers have the ability to exercise numerous supplemental options, which I will shortly describe, that make for greater efficiency and productivity with respect to the conduct of proprietary operations.

Moreover, and of parallel significance, those shippers who do not wish to engage in private carriage also have more alternatives because of the increased attractiveness, deriving from the Motor Carrier Act of 1980 and the ICC's interpretations and administration of it, of regulated for-hire motor carrier service. There are more for-hire carriers with liberalized entry; they are much more competitive, and they offer numerous attractive rate plans both for truck load and less than truck load traffic. No doubt some of this has been occasioned by the recession which we are now coming out of, but much of it must be attributed directly to the competitive climate stimulated and confirmed by the Motor Carrier Act of 1980.

So, in these respects, private carriers, in the view of the Private Carrier Conference, have been the beneficiaries of a wisely-drawn piece of legislation. I would like to turn now to some specific results of the 1980 Act as it has affected private carriers.

COMPENSATED INTERCORPORATE HAULING

Section 9 of the Motor Carrier Act of 1980 permitted multicorporate families with 100 percent common ownership between related corporations to engage in exempt for-hire carriage, that is, conduct transportation within the corporate family with proprietary fleets on an exempt basis without the necessity of obtaining ICC operating authority. This was a great move forward and has greatly benefitted hundreds of members of the Private Carrier Conference itself. The ICC was very prompt to implement this provision of the Act in successive decisions in Ex Parte MC-122 (Sub-No. 1), all of which have been upheld completely by the federal courts.

A mere notice to the ICC has sufficed to allow non-transportation corporate entities to engage in compensated intercorporate hauling for 100 percent related corporations. This has greatly improved the economics of private carriage by reducing empty outhaul and backhaul mileage and, accordingly, has resulted in reduced fuel expenditure for empty pay loads. Intercorporate hauling exemplifies in a very concrete way the underlying application of public policy enunciated in the Motor Carrier Act of 1980. To date, the ICC has received 939 notices from parent corporations covering 10,000 subsidiaries to the effect that they are conducting throughout the United States compensated intercorporate hauling. So this has worked out exceedingly well for the nation's private carriers who before 1980 were unable lawfully to effectuate compensated intercorporate hauling without obtaining ICC operating authority which to great extent was largely unobtainable because of restrictive entry policies of the Commission prior to the late 1970's.

There still remains, however, a problem area with respect to intercorporate hauling at the state level. A few states, such as California, have adopted similar provisions exempting intercorporate hauling on the same basis that it is exempt from operating authority requirements at the federal level. Some states have totally deregulated motor carriage operations so it is a moot issue. However, most states still regulate motor carriage and regard compensated intercorporate hauling as for-hire carriage that calls for the issuance of operating authority.

Authority is costly and in some cases very difficult to obtain, depending on the particular state involved. It acts as a curtailment, to a significant degree, in some cases on the utilization of a proprietary fleet which is called upon to conduct combined interstate and intrastate intercorporate operations. So there remain inefficiencies at the state level with respect to the fullest implementation of compensated intercorporate hauling. We call this to your attention because I know that you are concerned with the impact now and in the future of the 1980 Act on intrastate trucking operations when they are conducted on a basis that is integrally related to interstate operations.

BACKHAUL ALLOWANCES

As you will recall, Section 8 of the Motor Carrier Act of 1980 permitted sellers of food and grocery products with zone delivered pricing to grant backhaul allowances up to what the actual costs for delivery would have been had not their buyers used their own private fleets or other designated carriers to pick up the goods they purchased from such sellers. This, too, has been a great boon to buyers with private fleets, many of whom are members of the Private Carrier Conference. There has been widespread development among sellers of food and grocery products of attractive backhaul allowance programs. This Committee has already received the report last July from the Interstate Commerce Commission testifying to the success of these programs and to the benefits which consumers obtain with respect to the pass-through provision enacted by the Congress as part of Section 8 of the 1980 Act.

Backhaul allowances help reduce empty backhaul miles by offering an incentive to private carriers who purchase food and grocery products to utilize their trucks on a backhaul basis to haul the goods they are buying from sellers who otherwise would have them delivered either in seller-owned fleets or, as is more likely, through regulated carriers, both rail and motor, to the distribution centers and warehouses of food and grocery wholesalers and retailers. So this provision reflects the wisdom of the Congress in yet another way of helping to reduce empty backhaul mileage which has plagued private carrier operations for many decades and which now is really coming to be minimized because of the numerous options that are available to private carriers to help reduce and in some cases totally eliminate empty mileage to which their fleets had been highly exposed prior to 1980.

There have been some reports that the draft of further deregulation legislation composed by the Department of Transportation and which is now awaiting White House clearance will also recommend to the Congress an expansion of backhaul allowances to other sellers with zone delivered pricing systems, that is, sellers who are outside of the food and grocery area. Whenever such a bill comes to the Congress, the Private Carrier Conference will of course review it and comment appropriately on any such proposed expansion.

TOTO AUTHORITY

The Interstate Commerce Commission issued a landmark decision in 1978 in *Toto Purchasing & Supply Co.* This permitted for the first time private carriers to seek supplemental operating authority as common or contract carriers to serve outside shippers. In a very real sense, the 1980 Act, in codifying the ICC's liberal entry provisions, confirmed this very crucial 1978 regulatory decision which has since been upheld by the federal courts. As a result, numerous private carriers have applied in their own right for common and contract carrier operating authority to supplement their ongoing private carriage operations. Thereby, these private carriers are able to further reduce empty backhaul mileage by serving outside shippers on a compensated basis pursuant to the ICC issuance of such operating authority. Not only are these shippers directly benefitted by getting additional trucking service, but so also are the private carriers who are able to run a more efficient operation.

One stumbling block with respect to so-called Toto authority was the ICC control over securities issuances of all motor carriers, including Toto carriers who are primarily non-transportation organizations. Chairman Taylor of the Interstate Commerce Commission took the lead in 1982 and had a rider attached to the Bus Deregulation Act of 1982 totally eliminating ICC securities regulation over all motor carriers. His prime motivation was to help private carriers who wanted to have Toto authority and yet who could not subject themselves to ICC securities regulation by virtue of their non-transportation business activities. So Chairman Taylor deserves our commendation for the assistance in making Toto authority meaningful.

With the elimination of the securities regulation, an increasing number of private carriers are obtaining supplemental or contract carrier operating authority from the ICC pursuant to the liberalized entry (shifting of the burden of proof) standards enunciated in the 1980 Act. Private carrier experience in dealing with the ICC as regards the obtaining of operating authority, both common and contract, has been very positive. Providing that a private carrier puts together a good case showing his fitness and detailing the public need for this service, the ICC will grant the operating authority.

TRUCKING SUBSIDIARIES

Another way in which private carriers have been utilizing incidental operating authority is to shift their proprietary fleet operations to specially-created and wholly-owned trucking subsidiaries. Then the trucking subsidiary applies for ICC operating authority to serve outside shippers and yet continues to render in-house transportation to its parent and related non-transportation subsidiaries in the same corporate family. The latter may be accomplished on the basis of compensated intercorporate hauling as described previously in this statement. There are many tax, managerial and other advantages, depending on individual corporate circumstances, which can be derived from the formation of a trucking subsidiary as a means of holding ICC operating authority.

This approach, too, was challenged and the ICC's grant of authority to trucking subsidiaries to serve outside shippers while at the same time serving on an exempt for-hire basis related corporate shippers has been upheld by the federal courts. So here, too, you see ICC decisions implementing provisions of the 1980 Act being sustained.

As with the case with Toto operating authority, assuming a good application is prepared confirming the fitness of the trucking subsidiary and documenting the public need for the common or contract carrier service to outside shippers, the ICC has promptly and effectively issued such authority. This is all been to the good because it is another method by which private carriers have been able to reduce empty backhauls.

INTRASTATE PROBLEMS

As positive as has been the interstate experience with respect to private carriers obtaining supplemental operating authority, we must still report that there are cointinuing difficulties in many states as far as intrastate transportation by motor carrier is concerned. These difficulties arise, with certain exceptions, with respect to states that still require that the applicant bear the burden of proof in obtaining common or contract carrier operating authority for intrastate purposes. True to say, a number of states have already deregulated such as Arizona and Florida. A number of others do not have rigorous entry requirements for obtaining operating authority. But in the main most states still have rather exacting requirements that are anti-competitive, particularly as regards common carriage, with respect to new entry into the trucking business.

This has handicapped those private carriers who obtain operating authority from the ICC for interstate operations, but who also need and have difficulty getting operating authority on a parallel basis to serve outside shippers at the state level. Strangely enough, this can also affect the private carrier who forms a trucking subsidiary at the state level. These trucking subsidiaries must obtain operating authority to serve their own parents as well as sister subsidiaries in those states where compensated intercorporate hauling is not recognized as a form of exempt transportation. In some cases, this authority is difficult to obtain even though no outside, unaffiliated shipper is to be served. Since these fleets are used for the dual purpose of accomplishing both interstate and intrastate transportation, these ongoing restrictions at the state level in our view continue to unduly burden the nontransportation companies that want to maximize the efficiencies made available through the Motor Carrier Act of 1980.

OWNER OPERATORS

We at the Private Carrier Conference are well aware of the solicitude of this Committee and the Congress in general about the economic plight of the nation's owner operators. These independent truckers have hauled exempt agricultural commodities and have for many years been leasing themselves and their equipment to ICC regulated common and contract carriers. To the extent that private carriers obtain operating authority either as Toto carriers or through the trucking subsidiary alternative, they have been able to utilize owner operators as independent contractors, having been accorded by the ICC full privileges which accrue to regulated for-hire carrier status. So we are beginning to see in the aftermath of the 1980 Act a small, but steadily growing use on this basis of owner operators. To date they have been effectively foreclosed from accessing the shipper market. But when shippers obtain operating authority, there is a legal basis for them to lease owner operators parallel to that which has been favorably experienced by the traditional regulated carriers who are not in any way affiliated with non-transportation organizations.

SINGLE SOURCE LEASING [1]

Continuing to follow both the letter and the spirit of the Motor Carrier Act of 1980, the ICC proposed a couple of years ago to allow private carriers to single source lease trucks and drivers. The best example would be the leasing of owner operators. Reference Ex Parte MC-122 (Sub.-No. 2). However, the favorable decision of the ICC released in February, 1982, has been appealed and has been stayed by the Eleventh Circuit Court of Appeals. We expect a decision from the Court any time now. If the Court approves the ICC decision, it will be a direct basis for private carriers to lease owner operators as independent contractors. Then private carriers will not have to obtain operating authority in order to achieve this privilege and owner operators will have a huge shipper oriented market for their services.

TRIP LEASING

In order to eliminate the disparity between the privileges which private carriers do not have and which regulated for-hire common and contract carriers do have as regards trip leasing of trucks and drivers to other carriers, the ICC in November, 1982, issued a favorable decision in response to a petition filed by the Private Carrier Conference in the fall of 1980. Ex Parte MC-43 (Sub-No. 12). The decision would permit private carriers to trip lease their trucks and their drivers to ICC regulated carriers who need extra trucks and drivers for a particular haul. The privilege of trip leasing would allow a private carrier to avoid an empty outhaul or backhaul, depending on the situation, by allowing his truck and driver to be used by ICC regulated carriers. So trip leasing is a mutually beneficial concept. ICC regulated carriers are able to trip lease trucks and drivers between and among themselves.

This decision had been appealed, however, and has been stayed by the Eleventh Circuit Court of Appeals. So at this moment private carriers cannot trip lease their trucks and drivers to ICC regulated carriers, notwithstanding that many ICC regulated carriers want to be able to trip lease from private carriers. We do not expect a decision from the Court until sometime in 1984.

Underlying the Commission's decision in response to the Private Carrier Conference petition is the conviction that the efficiency of private fleets is a policy which furthers the Motor Carrier Act of 1980. Concomitantly, the ICC's decision will increase the efficiency of for-hire carrier fleets as well because it will afford them the ability to supplement their fleets with private carrier trucks and drivers on an individual trip lease basis when they are not being used by the private carrier in question.

But for the Motor Carrier Act of 1980, we do not believe that the ICC would have been in the position to eliminate this discrimination between private carrier trip leasing privileges and regulated carrier trip leasing privileges which has been outstanding for many decades. So in common with single source leasing, previously discussed, the ICC in the trip leasing decision has attempted, with success so far, to eliminate restrictions and discriminations imposed by the Commission years ago against optimum private carrier fleet efficiency.

CONCLUSION

I hope that this statement will communicate to the members of the Committee the essential satisfaction that private carriers have with the effects thus far of over three years of operation and experience under the Motor Carrier Act of 1980. I would like to compliment the Congress for its wisdom in effectuating such far reaching and positive legislative remedies to problems that have plagued private carriers for many decades and which grew out of the Motor Carrier Act of 1935.

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[1] On Tuesday, October 11, 1983 the United States Court of Appeals 11th Circuit released its decision approving single-source leasing. Pending additional legal action, the decision will become effective 21 days from the issuance date.

I would also like to use this forum to publicly compliment the leadership in recent years at the Interstate Commerce Commission. This includes the period in the late 70's immediately prior to the 1980 Act, the period immediately after the Act and currently at the ICC under the chairmanship of Reese Taylor. As far as we are concerned, the administration has been enlightened and the decisions helpful to private carrier fleet productivity. It is interesting to note that whenever challenged in the courts these decisions have thus far been universally upheld as fully within the scope of the Motor Carrier Act of 1980.

STATEMENT OF GRANT M. DAVIS, OREN HARRIS PROFESSOR OF TRANSPORTATION, UNIVERSITY OF ARKANSAS, FAYETTEVILLE, ARKANSAS

My name is Grant M. Davis, and I occupy the Oren Harris Chair of Transportation at the University of Arkansas, where concurrently I serve as the Director of the University's Center for Transportation Research. My University responsibilities include directing research projects on a variety of topics ranging from regional development to national transportation policy.

As a student of our transportation industries, I have published ten textbooks on subjects such as the U. S. Department of Transportation and national policy, logistics, antitrust economics, collective ratemaking, rate structure, carrier productivity and other topics. My latest two textbooks may be of interest to this comittee because they are entitled Motor Carrier Economics, Regulation, and Operations, published by University Press of America and Physical Logistics Management, also published by University Press of America. Both of these texts examine the Motor Carrier Act of 1980 and its subsequent impact on carriers, shippers, and the public. I am currently writing a text entitled Carrier Management which will be published next year by Addison Wesley Company. Other research projects of mine have been published in referred academic journals such as Traffic Quarterly, Transportation Journal, ICC Practitioners' Journal, Transportation and Logistics Review, and others. In this regard, I have published more than 150 referred articles analyzing various facets of transportation, regulation, economics, antitrust, and logistics.

Regarding the Motor Carrier Act of 1980, I have studied and testified before the Motor Carrier Ratemaking Study Commission on certain aspects of the legislation, the ICC, and have practiced before the Commission, as well as being a member of the Commission's bar. In short, I feel a professional interest in the Motor Carrier Act of 1980 and the administrative efficacy of that bill. Also, I have carefully studied the motor carrier industry for the past twenty years and feel qualified to share my professional assessment of the impact of the Motor Carrier Act of 1980 on the industry and the public. My statement, moreover, probably raises more questions than it resolves.

My interest in the Motor Carrier Act of 1980 is an outgrowth of basic studies into various pricing facets of transportation regulation that date back to 1965. As a former employee of Ford Motor Company, Mason & Dixon Lines, and as an academic, I believe that I can provide this Subcommittee with a somewhat different perspective regarding the interminable debate concerning motor carrier regulation, the 1980 Act, and its subsequent implementation and administration.

Having read all of the statements presented before the U. S. Senate and the Subcommittee by previous witnesses regarding the MCA and on matters pertaining to finance, bankruptcy, entry-exit ad infinium, I will not burden this Subcommittee with an erudite recitation of these various statements. Instead, my purpose in appearing before the Subcommittee is to emphasize my personal and professional view of how this Act is being implemented.

The Motor Carrier Act of 1980 was not specifically designed to be a "deregulation" act per se, but instead was supposed to recognize and solve certain problems existing in the industry. These problems were perceived by Congress to center on rates and market entry. The Act, of course, was specifically designed to liberalize entry and encourage price flexibility; two goals which before and after the Act have been seriously distorted. A hiatus exists between Congress' intentions of liberalizing entry,. encouraging rate flexibility, and the ICC's implementation of the Act. Suffice it to say, market entry standards are nebulous, and hence entry is, for all practical purposes, unrestricted. Rate standards do not appear to exist thereby permitting pervasive price discrimination against small shippers, ergo, facilitating a variety of other problems to evolve in the trucking industries.

Frankly, I believe that the Motor Carrier Act itself is fundamentally sound. However, the administration of this legislation, particularly when combined with the recession of 1981 to the present, has simply been disastrous to the industry, management, labor and large parts of the shipping public. There are numerous reasons for this observation and one only has to examine the industry and read the financial reports of carriers to observe the impact of free entry, depressed rates, facile administration, and the recession. One only has to examine the ICC's entry standards, new entrants, lack of rate standards, bankruptcies and unemployed truckers to observe the administrative result of the Commission's implementation of the Act. From the industry's perspective, not only has the excess capacity problem been compounded by new entrants, but large shippers are certainly benefiting from rate discounts which are not only highly discriminatory, but place small transport users at a competitive price disadvantage in their respective final product markets.

From a human viewpoint, the industry's perspective, and from my view, all areas of the country have been effected by the Motor Carrier Act of 1980. I am not going to burden this Committee with an extended statement or an item-by-item recitation of the number of new entrants in trucking, nor elaborate upon the depressed financial conditions permeating the industry. I will, however, examine certain basic facets of the Act's administration and share my professional assessment of the legislation's implementation and efficacy.

There are several major points which should be addressed that euphuistically could be labelled "How Effective is the Motor Carrier Act of 1980?" After carefully reading the Congressional hearings associated with the Act, and observing the Act's implmentation by the Interstate Commerce Commission, I have concluded that the legislation was designed and structured to achieve a balance between entry and excess capacity, rate flexibility and stability, and consumer responsiveness and change. Putatively the Act should have been effective, correct past abuses, and result in a financially sound common carrier system by motor. In practice, the industry is weak, balkanized, and is becoming highly concentrated in one area--a result Congress was cautioned against but did not heed. The major points I would like to address are entry, rates, human resources, and one or two additional issues.

Market Entry

As this Committee is more than aware, the Motor Carrier Act provided for liberalized entry into the trucking market by modifying historically established entry standards, i.e., the Act provided a "fitness" test for certain classifications of applicants and "public convenience and necessity" standards were not abandoned but modified. These new entry standards probably reflected the reality of the industry's physical composition i.e., LTL general commodity carrier, specialized carriers, etc. The law, however, as implemented by the ICC, applies as though the industry is one homogenous industry and simply encourages new carriers to enter the truckload special commodities area which in turn diverts freight from that segment of trucking that holds itself out to serve the general public. In all of trucking, only the LTL general commodity carriers approximates what I consider to be a "public utility" type of business.

A review of ICC reports reveals that over 10,000 new carriers have entered the trucking industry since 1980.[1] Not only has the large number of new entrants exacerbated capacity problems by increasing physical capacity almost 43% [2], but these carriers are generally specialized carriers in terms of goods hauled or routes served. The economic function of profit is to attract resources to an industry that should expand. If this aphorism or fundamental economic precept is correct, how many LTL general carriers have been attracted to the industry? Exactly one! That is Leaseway Transportation, and to my knowledge I do not think this carrier is operating at a profitable level as of this hearing. Conversely, the economic function of loss is to take away resources from an industry that should contract, and "exits" greatly exceed "entrants" into the LTL general commodity segment of trucking.[3]

Not only has the number of carriers increased materially since passage of the 1980 Act, but broader commodity authority has been thrust upon applicants seeking to enter this market.[4] Only a paucity of carriers are actually capable of providing true nationwide truck service. But, the Commission encourages these types of applications and has, for all practical purposes, negated the common carrier concept.[5] As I understand the 1980 Act, the ICC was charged with the responsibility of balancing demand with competition, but any discernable balance in processing applications has become a "paperchase" because protests or balance have not been achieved.[6]

What are the ICC's intentions regarding entry and rates when the present excess capacity on our highways wears out? We are dangerously close to reaching that point today. When the full impact of the Transportation Surface Assistance Act of 1982 becomes effective within the next 18 months, a large portion of the present power-units will be either worn out or unusable. I can assure you that the financial markets do not look favorably upon the industry where returns are

2.2%![7] I sincerely believe that shippers currently enjoying rate discounts will face increased rates in the near future because of declining capacity in terms of power units.[8]

The entry issue is complex, serious, and habors long-run implication in terms of public policy. If for-hire truck service in LTL markets is just another good and carriers have no corresponding public duty, what is to prevent massive freight rate increases when capacity decreases? The answer to this apparent conundrum is important for several reasons. First, aggregate transportation demand is relatively price inelastic and a reduction in quantity demanded will theoretically result in higher prices. Secondly, rate increases will be shifted to consumers in the form of higher product prices in many sectors of our economy. Third, and from my perspective, more ominous, the degree of concentration in the industry will increase. This Committee is or should be aware that substantial capital barriers exist relative to entering LTL general commodity markets.[9] This particular segment of trucking is already highly concentrated and will become even more so as market shares of large carriers continue to increase.[10] When present capacity declines, upward pressure on rates will further disrupt the freight markets probably by attracting even more carriers into the truckload special commodity market that are marginal in nature. Given the ICC's broadening of commodity descriptions, this segment of the industry will continue to face financial uncertainty and price wars may well continue for another three or four years. Current indications reveal that shippers are developing carrier selection strategies designed to minimize the number of trucking companies from which they will select service--not increase the number to be selected from. Also, the number of companies operating trucks on an intercorporate basis continue to grow almost daily.[11]

Has balanced entry been achieved? I harldy think so. The ICC is not considering entry decisions as Congress anticipated or concentration and chronic uncertainty would not be accelerating to the degree that is presently being experienced in the industry.

Rates

There is no question in my professional opinion but that rate regulation, or more realistically rate non-regulation, has levied a major impact on both the public and carriers as a result of the ICC's implementation of the 1980 Act. Under the Motor Carrier Act of 1980, consumers were supposed to benefit primarily from lower rates.[12] In fact, Congress was informed, as best that I can recall, that rates reform would provide benefits to every American of $8 or more. Indeed, the National Transportation policy segment of the law states that rates are supposed to:

> ...Allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public;
>
> ...enable efficient and well-managed carriers to earn adequate

> profits, attract capital, and maintain fair wages and marketing conditions...

or similar encomia to that effect. In Section 13 of the Act, the rule of ratemaking directs the ICC to determine reasonable rate levels for motor carriers of property and to authorize revenue levels that are adequate _inter alia_. Obviously rate regulation was considered a serious matter by Congress because rates were specifically mentioned and emphasized in the National Policy preamble to the Motor Carrier Act of 1980.[13]

The new rule of ratemaking contained in Section 13 made no changes to the statutory dictum that rates be reasonable, and free from undue discrimination, preference, and prejudice. Rate regulation is a quintessential part of public utility regulation and I seriously question if Congress intended for rates that are purely discriminatory, prejudicial, and preferential to become a norm; but this is the situation occurring daily in trucking because of the lack of ICC rate standards and administration.

Permit me to address three areas of ratemaking in which the ICC is seriously mistaken in not carrying out the Congressal mandate contained in the 1980 Act. Revenue levels are obviously determined by demand, rates, and traffic moved. For a number of years the Commission conducted extensive hearings regarding standards for revenue adequacy in the industry. A financially sound trucking system cannot provide service if rates are beneath cost of service. One does not have to be a savant to understand that rate regulation is a true misnomer in the industry today. Rate discounts are highly prejudical to small shippers who lack market power because they are in many instances bearing the brunt of rate increases[14] simply because the ICC refuses to prescribe rate standards![15] Only recently the ICC issued Ex Parte No. MC-166 that basically examined pricing practices employed in the industry. Incredulously, this tome concluded that the shipping public has benefited from pricing and carrier efficiency has increased![16]

Rate discounting, capacity problems, and monopsony, are the end result of the ICC's current lack of rate standard adherence and enforcement. Permit me to point out to the Committee some of the invidiously discriminating features of rates compounding the smaller shipper's problems. The discriminatory aspects of rate discounts become even more evident when considering profit-sales-cost ratios among shippers. If a large retailer has a 10:1 sales-cost ratio and receives discounts and small competitors do not, even though they may have a 11:1 sales-cost ratio, the small retailer has to sell an inordinate number of goods to make up any differences in freight.[17] In the area of small shipments, the ICC apparently has no standards. These rates have increased tremendously since 1980 because of the capacity problems in trucking as well as truckload traffic diversions to new special commodity carriers and massive discounting encouraged by the ICC. The 1980 Act calls for price innovation but simultaneously proscribes blatantly discriminatory rates. Perhaps in no area is the abdication of legal responsibility and Congressional "nose-thumbing" more apparent that in the rate area.[18]

To further provide this Committee with insight into the rate problem, consider Section 14 which provided for the creation of the Motor Carrier Ratemaking Study Commission, an organization putatively charged with the responsibility of studying collective ratemaking in trucking. This Commission has rendered its report to Congress and each of you should read it and then compare testimony presented before the Commission with the final report. In the event that you feel you are comparing apples and oranges, you are, because there is little if any relationship between the Commmission's report and the testimony presented to the agency. The Commission reached a five-to-five vote in 1982 regarding the report, subsequently replaced one member and obtained a favorable vote of 6 to 5 to accept the report. Needless to say, a minority report was filed and I have attached a copy of my remarks that appeared in the Congressional Record that reflects my analysis of the Commission's report.[19].

However, collective ratemaking is again being studied by the ICC, an agency that vigorously defended the concept for decades.[20] The Commission is currently reconsidering Section 5a agreements with a view to further emasculating a price-information system that provides nationwide price/service information. Rate bureaus employ the statutory standards prescribed by Congress regarding rate consideration, i.e., rates must be reasonable, and lack undue preferences, prejudices, and discrimination. Ludicrously, the ICC is contemplating further reducing the effectiveness of the present institutional pricing process.[21]

A third impact of the ICC's rate activities (non-activities) excluding the poor financial performance of the industry, of course, is the concentration and monopsony problems.[22] The degree of economic concentration in LTL general freight has been high for the past two decades.[23] According to some of the pundits who testified before Congress regarding the competitive nature of trucking, they obviously failed to recognize that capital barriers exist in this sector of trucking; the major sector from which most shippers must purchase LTL service. Not only has concentration increased substantially, but the capacity reduction correction that is taking place in the freight markets may well lead to further rate increases for both small and large shippers. Only recently a knowledged group of business practitioners predicted substantial increases in freight rates will occur in certain markets.[24]

Regarding the monopsony problem, a monopolist is only a monopolist on the supply side of any pricing equation. As omnious, if not more so, is the monopsonist on the demand side. These large shippers, receiving massive rate discounts, intensify the capacity problem currently plauging the industry. Given the enormous purchasing power of many of these firms, their competitive stance in final product markets can lead to serious inequities in retailing, wholesaling, and other industries.[25] Do not underestimate the large carrier's reaction to this problem. Countervailing powers exist that will correct the current imbalances, but rate reasonableness free from undue preference, prejudice, and discrimination standards will be ignored by the ICC and thereby compound the problem.

Where does the individual consumer benefit in the melange of discounts, high rates, etc? Prices have not declined. Large shippers are subsidized by small shippers, who in turn pay higher rates. Where does all of this end? Only Congress has the power to answer this interminable series of questions that require positive public policy solutions.

Human Impact

The Motor Carrier Act of 1980 contained no labor protection provision regarding bankruptcies and displaced employees of trucking firms. One of the more poignant/and tragic features of the industry's restructuring and performance has been its toll on human resources. The deplorable financial condition permeating the industry has resulted in 232 companies filing bankruptcy and countless others voluntarily surrendering or negating their individual operating authorities.[26] Nor has trucking changed dramatically, but the impact on stockholders, management and labor from changes in trucking have been extraordinary. The 1980 Act's policy statement calls for sound financial conditions in the industry and for fair working conditions.

Obviously financial conditions are anything but sound with a 2.2% rate of return in the industry. Rates, tonnage, routes, cost, efficiency ad infinium are interrelated in determining profits necessary for any operation. New entrants to the industry were for the most part low cost because of their specialized nature, but many of these have departed the market.[27]

Unfortunately, the human costs are high.[28] Even though the impact of recession and deregulation are somewhat difficult to discern, over 100,000 trucking employees have lost their jobs since 1980. When this number is expanded to reflect family size, the magnitude of this impact increases astronomically.[29] This nation is not sufficiently wealthy to incur lost productivity from this large of a group of its labor force. Entry and rates represent a major clue to determining the cause of bankruptcy, unemployment and low returns. Rates cannot fall beneath short-run variable cost but there are no rate floors or standards. Payrolls cannot be met if revenues do not cover expenses and other sophomoric observations. But, with no rate standards, no entry standards, and massive unemployment pervasive in the industry, by definition bankruptcy has to follow. I understand the current situation and have empathy with carriers, labor, and the public regarding these conditions because entry is not balanced with public needs, rates are not analyzed with a view to their impact or even the threshold ability to provide service, and hence a sizable portion of the work force is being forced into umemployment.[30] Given the current levels of unemployment in the industry, a new term can now be added to our economic lexicon-administrative unemployment.[31]

Other Observations

The financial health of the industry was examined carefully by Dr. Silbeman in testimony presented before the Senate[32] concerning the Motor Carrier Act of 1980. Even though 2nd quarter results are now available and reflect improved earnings, the industry still suffers from low earnings, a deteriorating capital base, and pervasive uncertainty regarding future taxes. Some motor carrier stocks have recently soared but any careful reading of financial data reveals these stocks reflect future capacity constrictions and market trends in general.[33].

Regarding service to small communities, frankly I do not think anyone truly knows or can quantify the impact on these areas. One study conducted by Professor Harper of the University of Minnesota revealed that rates descriminate against small shippers and communities,[34] but neither the extent nor the degree of this discrimination were quantified.[35] Most small community studies normally have some particular point to prove, so I can only surmise that no one actually knows the impact of the Act on small communities.

I would be remiss not to mention the impact of deregulation in Florida and Arizona but since these two states and their subsequent legislative actions were not related to the Motor Carrier Act of 1980, I will only suggest that the Committee examine transcripts of the

Motor Carrier Ratemaking Study Commissions's hearings held in Orlando during 1982, and in Phoenix in 1981; and the minutes of the Southern Legislative Council's Annual Meeting held in New Orleans in November of 1982. These sources will provide ample insight into the trucking experience in both states.

Summary and Conclusions

The Interstate Commerce Commission and its failure to act positively in this industry has produced four major impacts. What are these impacts? I think that this Committee should be concerned with them because they will certainly have a continuing impact on the trucking industry as we know it today, and what its structure will look like ten years or perhaps even ten minutes from now. The first of these impacts concerns economic concentration in the industry. Nothing disturbs me more than to read all of these various descriptions about the industry and its freedom of competition. The trucking industry truly consists of approximately 22 different industries, and in the LTL general commodity industry, the only one that in my estimation is a public utility-type industry has experienced a high degree of concentration that is becoming even more concentrated each day. What we have today is approximately ten major carriers that dominate this particular industry. Do we want this situation to intensify? There are certain factors that will exclude people from ever entering this market. Does this Committee realize that in the LTL general commodity industry there has only been one new carrier entering in this market since 1980, and that is Leaseway Transportation. I think this observation is important because companies realize the capital barriers to enter this market together with the possibility for providing a service that is unique and will not be matched by competing carriers.

Secondly, I think this Committee has to concern itself with the impact of the monopsonistic shipper. If our transportation policy is to provide service on demand, we have to carefully consider that there probably will be a capacity cost associated with providing that service. The monoponistic shipper cannot only impact on and aggravate the capacity required to serve everyone, but under our present system can receive a discount even though he is the party responsible for creating that capacity. Monopsonistic shippers merely consolidate their positions in the market by being able to reduce their transportation costs, which reduces their factor cost which has a massive impact on their cost-sales ratios, that I can assure you has not been passed on to their customers except very indirectly. You should carefully consider this discount situation because the party that benefits is the large user not the average rank and file citizens and consumers.

A third observation concerns rate practices. The ratemaking area is highly complex and there is no question but that the rate discounting practices that are going on are designed to benefit only major shippers. Rate practices, moreover, have resulted in an administrative environment where the Interstate Commerce Commission does not effectively enforce or even attempt to perform its statutory requirements under the Motor Carrier Act of 1980. Collective ratemaking, in my estimation, provides a pricing system that provides information and theoretically can increase competition in the market by providing knowledge pertaining to both prices and services. To do away with collective ratemaking represents a grave error in my professional opinion,[37] and an excess on the part of the ICC

The human factor is important and I think it has been grossly overlooked in this restructuring of the transportation industry. I am not suggesting that we have labor protection provisions, but I am concerned regarding what sort of national policy we are encouraging by restructuring an industry that has an ordinately high human cost. I certainly would not suggest that we have a full employment act for employees of truck lines. This suggestion is far from that. However, when an industry is permitted to or encouraged to massively give service away beneath cost, the end result is predictable.

The last major observation or impact concerns the balkanization of the industry. Do we want an industry that is nationwide in service, that is responsive to change in consumer needs; or do we want a balkanized, highly-concentrated industry? The answer to this question is philosophical, and is closely related to the common carrier concept.

We could argue the merits of regulation versus deregulation forever. However, I would like to caution this Committee that the Motor Carrier Act of 1980 represents a philosophy of encouraging competition in the industry while still retaining a framework of positive regulatory practices designed to protect the consumer and to encourage industry innovation. We do not have that. We do not have an enforcement agency; we do have a national transportation policy for motor transportation that is not being implemented. What do we have in trucking? We have an industry where earnings are almost negative in terms of losses but attracting entrants, a rate situation favoring the large at the expense of the small, a labor situation of substantial unemployment, an inadequate financial situation, and an industry in turmoil. Whose responsibility is this? I think we all know the answer to this question...

FOOTNOTES

[1] Traffic World, September 12, 1983, p. 18. This article reports that 25,342 carriers were authorized by the ICC to serve as of June 1, 1983. Also, consult statement of George Zigich, before the Surface Transportation Subcommittee on Commerce, Science and Transportation, U.S. Senate, September 21, 1983, Washington, DC.

[2] Ibid. Regarding the capacity problem in trucking consult House Document 97-87, Oversight--Motor Carrier Act of 1980, (198), pp. 82-83.

[3] Accurate counts of carriers exiting trucking are difficult to compute because many carriers that cease operation do not physically surrender their operating authority. For an estimate of the number of carriers departing the motor freight market and partial listings, see statement of Mark J. Andrews, before the Committee on Commerce, Science, and Transportation, U.S. Senate - Oversight Hearings Persuant to Section 3(b) of the Motor Carrier Act of 1980, September 21, 1983, Washington, DC, pp. 1-34 of attachment. Also consult Data Resources, "The Impact of Economic Change and Regulatory Reform on the U.S. Trucking Industry," before the Senate Subcommittee on Surface Transportation, Senate, September, 1983, p. 1.

[4] Supra, note 3. Broader commodity authority has been thrust upon carriers who did not want to transport bulk-commodities and other goods. See American Trucking Associations v. United States (659 F. 2nd 452, 472 (1981)). Widening commodity authority effectively diminishes traditional classifications used to identify certain types of carrier operations.

[5] Discarding the common carrier concept, duties, and responsibilities constitutes a serious public policy change, given the contributions this concept has played in terms of economic growth and transportation. The ICC flippantly dimissed this crucial concept in Ex Parte No. MC-77 Sub 3 by stating in effect that the common carrier concept is what the carrier wants it to be! For a brief essay of the importance of common carrier concept see Professor Farris' manuscript entitled "The Role of the Common Carrier," Transportation Journal, Vol. 6, No. 4 (Summer, 1967), pp. 28-29. Also consult Charles A. Taff, Commercial Motor Transportation (6th ed.: Centerville, MD: Cornell Maritime Press, 1980), pp. 113-115.

[6] A general feeling among most carriers that I have discussed protests standards is "what good does it do?" The same observation does not hold true with respect to state operating applications, however. In this regard, see Grant M. Davis, Motor Carrier Economics, Regulation, and Operation (Washington, DC: University Press of America, 1981), pp. 375-386.

[7] Statement of Irwin H. Silberman, before the Subcommittee on Surface Transportation on Commerce, Science and Transportation, U.S. Senate, Washington, DC, December 14, 1982, p. 1. Dr. Silberman predicted returns for 1983 would be negative. See U. S. Interstate Commerce Commission, Staff Report Number 9, Highlights in the Property Motor Carrier Industry, (Washington: ICC Office of Transportation Analysis, July, 1983), p.33.

[8] One estimate from a trucking executive regarding power-unit reductions centers on mid-1984 as the appoximate period when capacity will be dramatically decreased. May 6, 1983, Haines City, Florida. Relative to rate increase estimates in the industry, see Kenneth C. Williamson, Marc G. Singer and Roger A. Peterson, "The Impact of Regulatory Reform on U. S. For-Hire Freight Transportation: The User's Perspective," Transportation Journal, Vol. 22, No. 4 (Summer, 1983), p. 33.

[9] Although capital barriers may not be as substantial as rail, sizable barriers do exist. Only one LTL general commodity carrier--Leaseway--has entered this market since 1980.

[10] For evidence of concentration movements in LTL trucking, consult Silberman's statement in note 7, page 6 describing market share. Compare this statement with earlier concentration measures using a Gini Index approach. Grant M. Davis, "An Analysis of the Economic Significance of Concentration in the Regulated Intercity Trucking Industry," Journal of the Alabama Academy of Sciences, Vol. 43, No. 3 (July, 1972) pp. 200-202.

[11] Gleaned from Federal Register. Also, see Traffic World, September 12, 1983, p. 18. This growth exacerbates traffic diversion problems among LTL general commodity carriers.

[12] These pronouncements of lower rates failed to recognize that aggregate transportation is relatively price inelastic, and assumes that shippers would reduce final product prices in markets to reflect lower factor cost. For an excellent treatment of price behavior in buying and selling channels see Kent B. Monroe, Pricing, (New York: McGraw Hill Book Co., 1979), pp. 190-203. Also see responses to MCA, report for the Motor Carrier Ratemaking Commission entitled Ratemaking Analysis, August, 1982.

[13] Motor Carrier Act of 1980, Section 4.

[14] If the ICC enforced rate standards this would not necessarily be the case. The small shipment problem is a long-time problem in transportation and ending rate regulation will in all likelyhood intensify the problem. What in effect is taking place today in markets is large shippers being subsidized by small shippers. Cross subsidies abound in transportation but appear acute among small shipment. Negating rate regulation for small shipments is not a solution in the long-run to cross subsidy problems. Consult Grant M. Davis and William Cunningham, "Deregulation - A Green Light for Trucking Efficiency - A Comment," Regulation (November - December, 1982), pp. 4-5, for a discussion of rates on small shippers, independent rates, and the Commission's lack of rate standards.

[15] Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, August 26, 1983, p. ii, where the Commission states..."we will continue to use the case-by-case approach and existing standards to determine the lawfulness of motor carrier prices and practices, and we will rely primarily on ex post remedies should anticompetitive behavior be proven." Also see, Highlights of Activities in the Property Motor Carrier Industry, op.cit., pp. 17-18.

[16] Ibid.

[17] The ICC in MC-166 did not consider the sales:cost:profit ratio impact in their report on pricing. For example, if a retailer can reduce cost in the freight area, the end result may be more pronounced than a corresponding increase in sales. Because sales:cost ratio vary among firms the impact of discounting is difficult to follow or measure with precision. The end result, however, is to place the small consignee (in terms of final product price) at a disadvantage that he or she may not be aware of. This price-rate interaction was carefully presented to the Motor Carrier Ratemaking Study Commission.

[18] This view was well stated in Mr. Andrew's statement before the Senate Subcommittee on Commerce, Science, and Transportation, op.cit., p. 8.

[19] Congressional Record-Senate, May 20, 1983, pp. S7217-S7270, and Congressional Record-House, May 23, 1983, pp. E2435-E2439.

20 Albert R. Karr, "Antitrust Immunity for Trucking Firms in Setting Fees Would End Under ICC Plan," The Wall Street Journal, Friday, October 7, 1983, p. 8. The author correctly reports the ICC would be exceeding its statutory authority in the area of collective ratemaking. For a view of the history of ICC support for collective ratemaking consult Grant M. Davis and Charles S. Sherwood, Rate Bureaus amd Antitrust Conflicts in Transportation: Public Policy Issues (New York: Praeger Publishers, Inc., 1975) pp. 9-32.

21 Karr, Loc.cit. Also consult Ex Parte No. MC-172- Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments, ICC Register, October 12, 1983, P. 7-10.

22 For an extended discussion of the monopsony problem in trucking, reference Grant M. Davis and William Cunningham, "The Impact of the Monopsony Shipper on Motor Carrier Strategic Planning: A Modeling Approach for Initial Approximation," Proceedings: Causal Marketing Symposium (Chicago, Illinois: American Marketing Association, March 2, 1983).

23 Supra, note 10.

24 Transportation Strategies for the Eighties (Oakbrook, Illinois: Temple, Barker and Sloane, Inc., 1982), chapter V.

25 Davis and Cunningham, Causal Marketing Symposium, loc.cit., and note 10.

26 Supra, note 3, pp. 4-6 and appendix of carrier departing markets. ICC, Highlights of Activities in the Property Motor Carrier Industry, op.cit., p. 35.

27 Ibid.

28 When contrasted with rail transport, trucking is essentially a "people intensive" industry. In this regard contrast trucking employment with other modes reported in Transportation America (1st ed.: Washington, DC, Transportation Policy Associates, March 1983), p. 29. For an indepth analysis of unemployment in the industry, see Norman A. Weintraub, Final Report: Layoffs, Layoff Rates and Employment: April 1983 ICC Regulated Motor Carriers of General Freight (Washington, DC International Brotherhood of Teamsters, August 5, 1983), p. 4 where layoff rates are reported to have increased from 29.3% to 33.6% in the Central Conference between 1983 and 1982, and 3 to 5 percent increases in layoff were reported by the Eastern, Southern, and Western Conferences during the same time-frame. A normal mean layoff rate of 32.16% was computed for April 1983.

29 National Brotherhood of Teamsters, News Service, September 21, 1983, p. 2. For a poignant discussion of the personal hardships encountered during the restructuring of the industry, see statements of Jack Chambers, Barney Huffman, and Marvin Saunders, before the Senate Subcommittee on Commerce, Science and Transportation, Washington, DC, September 21, 1983.

30 With unemployment of 100,000 people, bankruptcies, and massive departures of carriers from markets, it is difficult to understand how the Motor Carrier Act has "encouraged fair working conditions" and wages; a policy stated in the 1980 Act. Consult, "ICC Paves Road to Ruin for Truckers," The Wall Street Journal, October 6, 1983, p. 31 in Letters to the Editor section.

31 Even when attaining relative full employment there is always some form of employment technically refered to as structural, technological, or fictional unemployment. To this group "Administrative" unemployment can now be added.

32 Silberman and Andrews, Loc.cit.

33 For example, carefully analyze the prospectus of J. B. Hunt an irregular route carrier seeking equity capital at this time. The offering is priced much greater than earnings and other carriers' publically traded stocks have increased in the current market, although earnings have not increased materially. Also, see Highlights of Activity in the Property Motor Carrier Industry, op.cit., p. 36.

34 Statement of Donald V. Harper before the Motor Carrier Ratemaking Study Commission, Kansas City, Missouri, March, 1982. Also consult, Donald V. Harper, "Consequences of Reform of Federal Economic Regulation of the Motor Trucking Industry," Transportation Journal, Vol. 21, No. 4 (Summer, 1982), pp. 35-58.

35 For example see U. S. Department of Transportation, "Follow up Study of Shipper Review Mode Choice in Selected Rural Communities, 1980-1981," (September, 1982), p. 14; and, U. S. Department of Transportation, "A one-year assessment of the Motor Carrier Act of 1980: Small Community Trucking Service in Nevada and Oregon," (November, 30, 1981), and Michael W. Pustay, "Transportation Regulation and Service to Small Businesses: The Case of Contract Carriage," Transportation Journal, Vol. 22, No. 1 (Fall, 1982), pp. 11-17.

held recently by the students of the University of Cincinnati.

Of the 2,184 who voted on this issue, 70.5 percent favored a stronger Clean Air Act. This poll is yet another indication of the strong public sentiment for continued efforts to improve the quality of our air. Last January, Business Week magazine published the results of a Harris poll indicating that: 48 percent of the American people support a stronger Clean Air Act; 30 percent supported the status quo; and only 7 percent wanted to weaken the act.

As legislators we have the responsibility to enact laws to protect the health of the people we serve. By failing to reauthorize the Clean Air Act 19 months after it has expired, we clearly have not lived up to that responsibility. Our constituents want a new Clean Air Act now and I urge that the Members of the House make this one of their highest priorities.●

AN OFTEN "MISUNDERSTOOD AND CONTROVERSIAL TOPIC"

HON. JOHN P. HAMMERSCHMIDT

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 23, 1983

● Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to take this opportunity to share with my colleagues in the House of Representatives, a timely analysis by Grant M. Davis, Ph. D., Oren Harris, professor of transportation, University of Arkansas, of the Motor Carrier Ratemaking Study Commission's recent report.

In the collective ratemaking debate, the topic of antitrust immunity for the motor carrier industry is not only one of great interest to carriers, shippers and academics, but to all of us who would be affected by the termination of this immunity. Dr. Davis' analysis has been reprinted in the lead editorial of Traffic World, the largest trade press in transportation. The text is as follows:

[From Traffic World, May 9, 1983]

EDITORIAL: "A MISUNDERSTOOD AND CONTROVERSIAL TOPIC"

Dr. Grant M. Davis, the Oren Harris professor of transportation in the College of Business Administration of the University of Arkansas, Fayetteville, and recipient of the Delta Nu Alpha "Transportation Man of the Year" award in 1971, has performed a public service by writing a scholarly assessment (published elsewhere in this issue) of the report of the Motor Carrier Ratemaking Study Commission that was recently made public (T.W., Feb. 28, p. 9, and March 7, p. 49).

Dr. Davis places proper emphasis on his finding that the conclusions stated by the Study Commission in its report to Congress are not supported by the evidence put before the Study Commission in the hearings it conducted. He made the comment that collective ratemaking is "a misunderstood and controversial topic."

"The sheer weight of evidence when viewed in terms of the shipper/buyer of transportation services," Dr. Davis writes, "clearly reveals the salient conflicts existing between the agency's report and the record compiled during 1981 and 1982."

He stated that the Study Commission essentially directed its attention to the major issues of collective ratemaking as perceived *by Congress* (italics ours), including rate levels, discrimination, cross-subsidization, monopoly profits, and the need for continuing antitrust immunity in the industry. Ancillary issues, such as national policy, infrastructure development, monopsony shippers, and the validity of the common carrier concept were not directly mandated, "even though they are extremely important to our transportation system," Dr. Davis wrote. As to each of those issues, he added, "evidence was submitted by over 1,000 witnesses supporting collective ratemaking, as opposed to 27 witnesses who appeared in opposition to continuing the collective ratemaking process." These witnesses include the uncounted membership of associations favoring collective ratemaking. In all, Dr. Davis said, 500 submissions were made and presented by 480 different entities and individuals.

American citizens have a right to assume, we believe, that investigations instituted or ordered by Congress will be premised on the principles of fairness, or giving ample opportunity to opponents and proponents of controversial issues to present pertinent evidence, without refusal by the investigators to hear or receive "pro" and "con" arguments. But those principles were apparently ignored by the Study Commission.

For the stated purpose of gaining some insight into the magnitude and the affiliations of witnesses supporting collective ratemaking in actual appearances before the Study Commission, Dr. Davis included in his assessment of the commission's report a tabulation of the number of witnesses supporting, disapproving, or assuming neutral positions regarding the collective ratemaking process.

The tabulation shows that 80 percent of the shippers who testified favored collective ratemaking, while only 18 percent opposed it and 2 percent took no position; that 88 percent of the associations heard by the Study Commission favored and only 10 percent were against collective ratemaking, while 2 percent were neutral; that 99 percent of the carriers were for and only 1 percent against collective ratemaking; that 76 percent of the individuals who testified and 77 percent of the traffic consultants heard by the MCRSC supported collective ratemaking (5 percent of the individuals being neutral), and that government witnesses were 60 percent for and 40 percent against collective ratemaking. The record of the hearing held by the Study Commission in Cambridge, Mass., in March 1982, Dr. Davis noted, clearly revealed a continuing need for antitrust immunity by both carriers and shippers. He added that "past studies, moreover, certainly support this observation."

One of the various findings set forth in the Study Commission report to which Dr. Davis takes exception is that the ICC can continue to meet its statutory obligations in the area of motor rate regulation when antitrust immunity is eliminated. This, Dr. Davis observes, clashes dramatically with testimony presented in Cambridge before the Study Commission. There, he said, the antitrust legal experts who testified questioned seriously the wisdom of eliminating antitrust immunity and any subsequent reliance on the antitrust laws for recourse to shippers and carriers in matters involving rate litigation.

The "conclusions" stated by Professor Davis include the following:

"By accepting a highly questionable report, together with contested maneuverings in terms of commissioner votes and membership qualifications, the Study Commission has not rendered a public service to the American public in this debate. . . . By either purposefully ignoring the evidence or assigning disproportionate weights to testimony rendered, the commission has elected to ignore or minimize past studies which clearly reveal the nature of the evidence which would be presented. . . . Tests of hypotheses regarding shippers' perceptions of collective ratemaking over time certainly indicate that most shippers believe efficiency was attainable under collective ratemaking.

"It is unfortunate that a needed public commission such as the Motor Carrier Ratemaking Study Commission has issued such a tainted report which is as controversial as the various issues it addresses. Unfortunately, future reliance on commission reports as accurate indicators of issues and the intensity of feelings associated with these issues may well be seriously discounted by future students seeking the true issues and positions of various groups associated with the collective ratemaking debate."

EDUCATOR SEES FLAWS IN REPORT OF RATEMAKING STUDY COMMISSION

(By Grant M. Davis)

One of the putative purposes of the Motor Carrier Act of 1980 was to increase rate competition by simultaneously providing shippers with increased price and quality options.[1] Supposedly the reason for congressional inclusion of this section of the Act, together with other provisions, was simply to resolve a general perception that price competition in the trucking industry was neither pervasive nor effective.

Critics of the traditional rate conference pricing process used in the regulated segment of the motor carrier industry have contended over the years that freight rates were not only excessive, but were unresponsive to changing shipper needs.[2] Advocates of collective ratemaking, on the other hand, forcefully pointed out that accurate cost allocation is virtually impossible in the industry because of joint and single-line rates, and competition—factors compounded by a large body of overhead costs which have to be allocated to specific shipments. Because of the operational and institutional nature of the for-hire motor carrier industry and shipper desires for joint rates and service, advocates of collective ratemaking have contended that antitrust immunity is needed in order for the industry to function, fulfill business commitments, and adhere to various legal requirements and contracts existing between shippers and carriers.[3]

A majority of shippers, not surprisingly, perceived the LTL general commodity carriers as public utility types of businesses, and hence antitrust immunity was needed not only for the carriers, but for shipper organizations as well.

This interminable debate was supposed to be resolved by the Motor Carrier Act of 1980, but instead Congress created the Motor Carrier Ratemaking Study Commission to investigate and analyze certain issues involved in the collective ratemaking process and to subsequently report its findings and recommendations regarding the future of maintaining or eliminating this important pricing approach. Unfortunately, the commission has generated almost as much controversy as the basic issue of collective ratemaking by adopting a highly controversial staff preliminary draft report after the original Commission voted not to accept the report.[4] Following the 1982 senatorial elections and questions concerning industry qualifications of one member, the commission voted on February 24, 1983, by a six-to-four vote, to accept the contentious preliminary draft report. This report is the primary purpose of this brief paper simply because the findings contained in the preliminary draft do not appear to be either correlated closely with the bulk of the evidence presented before the Commission, nor previous studies concerning collective ratemaking in trucking.

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[1] Footnotes at end of article.

The basic issues involved in collective ratemaking such as antitrust immunity, cartel profits, and service to small shippers and communities were carefully defined and examined, albeit in the context of the deregulation debate, several years prior to the Motor Carrier Act of 1980, and the subsequent creation of the Motor Carrier Ratemaking Study Commission.[5] In fact, public policy issues such as participation in bureau activities by shippers, the validity of the common carrier concept, rate levels, subsidization, small community service, and a variety of other issues were examined and published in article form in the *ICC Practitioners' Journal*, in the *Transportation Journal*, and in other referred journals, and even several books were written concerning the important features and shipper perceptions of the collective ratemaking debate.[6]

In the course of these formal studies, shipper respondents were analyzed, categorized, and subjected to various statistical tests to measure significant changes in their preceptions of collective ratemaking and major issues over time.[7] Not surprisingly, a majority of shippers in these studies favored collective ratemaking, desired some selected modifications in the process, generally reported satisfaction with the pricing procedures, and believed that this particular pricing process, while definitely in the public interest, would be jeopardized without specific antitrust immunity.[8]

In short, any serious review of the existing literature dealing with this subject clearly reveals two distinct bodies of thought regarding the collective ratemaking controversy. On the one hand, a majority of shippers favored the process, whereas a small coterie of federal officials, together with some academics, vehemently oppose virtually any facet of collectively established rates. In short, definitive empirical data existed concerning shipper perceptions of the issues prior to Congress creating the Motor Carrier Ratemaking Study Commission.

Within this highly contentious and divided environment, the Motor Carrier Ratemaking Study Commission should have anticipated the overall thrust of the evidence that would be submitted during its formal hearings, i.e., a majority of witnesses would support collective ratemaking whereas a few government officials and a few academics would oppose the process.[9] This division of perceptions was surveyed and recorded over a seven-year period before Congress even considered creating the Commission. Nevertheless, the Motor Carrier Ratemaking Study Commission originally consisted of three U.S. Senators, three U.S. Representatives, two shippers, one motor carrier member representing a general commodity carrier, and one motor carrier member belonging to a rate bureau. At the end of a six-month hearing process an evenly divided Commission voted five-to-five to reject the preliminary draft report.[10]

In fairness to all parties involved in the hearings, a serious examination of the record reveals that substantially more issues and questions were raised during the course of the Motor Carrier Ratemaking Study Commission hearings than were resolved.[11]

The controversy involving the collective pricing process intensified when the reconstituted commission (one member was defeated in his bid for re-election to the U.S. Senate and was subsequently replaced by a new appointee by Vice President Bush) reconvened on February 24, 1983, and with a minimum amount of debate promptly accepted the previously rejected polemical draft report on a six-to-four vote.[12] Needless to say, not only is collective ratemaking a misunderstood and controversial topic, but now the draft report has developed into a major controversy.

A QUESTION AND AN ANSWER

At this particular point, a question concerning the report certainly needs to be proffered: Why question the report? The answer is simple. First, serious students of national policy rely extensively upon congressional committee reports and hearings before public agencies and commissions to gain insight into policy changes and trends regarding positions of various groups relative to major public policy issues. Secondly, courts frequently rely upon congressional hearings and records to glean congressional intent in matters involving litigation. Thirdly, commission reports receive inordinate emphasis in scholarly pursuits simply because all parties do not have access to hearing transcripts and all of the evidence submitted for inclusion in the record.

Even though the Motor Carrier Ratemaking Study Commission report contains a plethora of references favoring and disapproving collective ratemaking, the report failed to reflect all the evidential statements submitted to it for inclusion in the record. In this regard, the report is open for serious question of equity, fairness, and a variety of other assorted ills for two simple reasons, i.e., the change in vote, and the sheer volume and diversity of the evidence presented before the Commission from any different parties.

The Motor Carrier Ratemaking Study Commission essentially directed its attention to the major issues of collective ratemaking in the industry as perceived by Congress. These included rate levels, discrimination, cross subsidization, monopoly profits, and the need for continuing antitrust immunity in the industry. Ancillary issues such as national policy, infrastructure development, monopsony shippers, and the validity of the common carrier concept were not directly mandated, even though they are extremely important to our transportation system. These issues, moreover, were examined in a highly structured manner. Each of these issues will be briefly examined in light of the evidence submitted by over a thousand witnesses supporting collective ratemaking as opposed to twenty-seven witnesses who appeared in opposition to continuing the collective ratemaking process. These witnesses include the uncounted membership of associations favoring collective ratemaking.

To gain some insight into both the magnitude and affiliation of witnesses supporting collective ratemaking in actual appearances before the Motor Carrier Ratemaking Study Commission, one should look to the number of witnesses supporting, disapproving, or assuming neutral positions regarding the process. Thirty-five shippers supported the institutional process, three were opposed, while one was neutral; 44 associations (representing hundreds of members) supported collective ratemaking, five appeared in opposition, and one assumed a neutral position; 260 carriers supported the process, and one opposed collective ratemaking; 18 witnesses favored collective ratemaking; 45 individuals supported the process, 11 opposed, and three were neutral; and finally, 13 consultants favored collective ratemaking, and four appeared in opposition to the process. In all, 500 submissions were made and presented by 400 different entities and individuals.

A somewhat different perspective is provided by examining the composition of the witnesses presented in tabular form. As depicted in Table 1, 90 percent of the submissions before the Motor Carrier Ratemaking Study Commission favored continuing collective ratemaking, 9 percent opposed, and 1 percent assumed no position. Furthermore, 1,238 additional individuals associated with the transportation industry (excluding carriers) signed a resolution subsequently presented to the commission favoring the continuation of collective ratemaking for both single-line and joint-line rates. Indeed, the magnitude of evidence, while not only enormous in terms of volume and coverage, was expected, given the nature of previous studies concerning shippers' perceptions regarding antitrust immunity, deregulation, and other physical distribution, logistics-type issues.[13] Even when the evidence presented before the commission is excluded, the Commission's findings clearly conflict with past studies, the issues and perceptions of which were validated and strengthened by examining statements supplied by 90 percent of the witnesses presenting submissions to the agency.

Any serious research into a socioeconomic phenomenon that can be sustained over time in terms of issues must be accorded a validity even in the somewhat nebulous area of public policy. In fact, the commission's draft report appears to be unrelated to the bulk of the evidence submitted in support of collective ratemaking.

Any serious and detailed examination of the Motor Carrier Ratemaking Study Commission's highly polemical report, when contrasted with the aggregate record submitted to the agency, reveals either an inveterate position assumed by the commission before the hearings, a weighing of evidence presented before the commission by certain witnesses, or both. Either position would be clearly wrong in terms of accessing the contentious public policy aspects of the collective ratemaking debate. In any event, the sheer weight of evidence when viewed in terms of the shipper/buyer of transportation services clearly reveals the salient conflicts existing between the agency's report and the record compiled during 1981 and 1982. Each of these findings will now be succinctly examined.

TABLE 1

[In percent]

	Pro	Con	No position
Shippers	80	18	2
Associations	88	10	2
Government	60	40	
Carriers	99	1	
Individuals	76	19	5
Traffic consultants	77	23	
Total	90	9	1

The commission's initial finding dealing with the historical basis of collective ratemaking being neither relevant nor needed relative to antitrust immunity is certainly at odds with the historical evolution of the concept.[14] Any diligent reading of the history of collective ratemaking and attendant litigation involved in the process over time reveals the concept evolved and developed because of the economic characteristics of the initiating railroad industry.[15] A careful reading of the record, moreover, reveals that collective ratemaking evolved chronologically because of practical business considerations and practices; as well as the ICC issuance of regional trucking operating authorities. The need for immunity, as stated by several witnesses during the Commission hearing in Cambridge during March of 1982,[16] clearly reveals that a continuing need for antitrust immunity is perceived to be needed by both carriers and shippers. Past studies, moreover, certainly support this observation.[17]

The second finding of the commission that collective ratemaking conflicts sharply with our national transportation policy, which calls for increased reliance upon market competition, is clearly at odds with the evidence presented before the agency. Numerous witnesses testified to the pervasive nature of price competition in the industry,[18] and the commission was cautioned repeatedly by several witnesses regarding the interrelated problems of capacity cost and monopsony shippers.[19] Ample evidence, moreover, was submitted regarding the nature of both price and service competition occurring in the industry both before and after the 1980 Act. This Act, moreover, calls for price/quality options for shippers, a hoary assumption that quality and price in transportation always maintains an inverse relationship, which is not always true in the case of transportation markets.[20]

The third finding of the commission, "that homogeneous service is based on average cost, and rates do not meet changing shipper needs," certainly conflicts with testimony submitted to the commission. Testimony rendered to the commission demonstrated that service is not homogeneous in either terms of price or cost, and that accurate costing in the industry is impossible.[21] Historical studies clearly reveal that shippers had difficulty in costing LTL/ truck service even when they attempted to do so. The commission's findings in terms of product uniqueness and changing shipper needs ignores the very existence of our classification of carriers such as contract carriers, as well as the nature of specialized carriers functioning in freight markets.[22]

Finding number five of the commission's draft report stipulated that participation in the collective ratemaking process by shippers is limited and is at best nebulous relative to the need for an argument against the basic collective ratemaking process. Indeed, failure to exercise a fundamental right is not necessarily beguiling or an abridgement of the legal process. For that matter, rate negotiations were primarily between individual shippers and carriers, and rates agreed upon were forwarded to the bureaus for publishing. Evidence regarding actual participation in bureau hearings in the form of a list of companies, together with the dates of their appearances, was presented to the commission during the January hearing in Akron, O.[23] Earlier studies submitted to the commission also revealed that active participation by shippers appears to be a function of firm size and probably is indicative of similar participation behavior by small firms in other areas of business. Failure to participate is also misleading because many rate matters were resolved by traffic or trade groups representing small groups of shippers in the ratemaking process.[24]

The commission's sixth finding that the Interstate Commerce Commission's authority to regulate rates is broad, but limited by poor costing methodology, is somewhat strange in terms of its meaning to the collective ratemaking debate. Unequivocally, the ICC possesses comprehensive rate regulation jurisdiction if it cares to exercise that power.[25] In the area of costing, moreover, the Commission has historically been assisted by bureaus who have contributed to improved costing in the industry.[26] Regarding why so few protests were filed with the Commission, the ICC has basically relied upon shipper complaints because of the sheer volume of rate changes filed with the agency, together with manpower and funding shortages.

Finding number seven of the commission—that the ICC can continue to meet its statutory obligation in the area of motor carrier rate regulation when antitrust is eliminated—clashes dramatically with testimony presented in Cambridge before the agency.[27] That is, the antitrust legal experts testifying in that city before the Commission seriously questioned the wisdom of eliminating antitrust immunity and any subsequent reliance upon the antitrust statutes for recourse to shippers or carriers in matters involving rate litigation.[28] In fact, practical experience certainly indicates that some carriers are overreacting to avoiding antitrust matters.

The eighth finding of the commission concerns rate levels, i.e., the overall rate level for motor carriers is higher than it would be without collective ratemaking because the basic process creates an environment that encourages wage increases that exceed labor productivity gains. This finding is totally in conflict with financial data submitted to the agency, as well as in-depth studies presented before the Motor Carrier Ratemaking Study Commission in the Kansas City hearing held during March of 1982. Even though the general rate level is a fairly meaningless concept in terms of either efficiency or productivity, the commission did receive extensive evidence in the form of statistical studies depicting the efficient use and allocation of industry resources broken down by cost components. These data were supplemented by statistical studies, none of which illustrated any gross inefficiencies in terms of price, productivity, or restrictions of output.[29] In fact, an inordinate amount of time was expended during the course of this particular hearing session to a discussion concerning the average carrier, and the consensus opinion of most of the witnesses was that no such carrier exists.[30]

Finding nine of the commission's executive summary deals primarily with the problem of excess capacity currently existing in the motor carrier industry. Somewhat ludicrously, the report states, "This excess capacity is the combined result of earlier planned capacity, and the slack in demand brought about by the current recession. This temporary excess capacity has placed substantial downward pressure on many rates. There is, however, no evidence of the conditions required for unhealthy (destructive) competition over the long-run." During the entire course of its field hearings, the commission was repeatedly informed of rampart destructive price competition in the industry, a condition accelerated by liberalized market entry and the recession.[31] If the commission (finding number three) believes trucking service is homogeneous, it is incongruent to assert that destructive price competition is a short-run problem. Evidence was presented before the commission illustrating the pervasiveness of the very conditions necessary for creating excess capacity in the industry (liberalized market entry) to be a long-run and not short-term phenomenon; ergo, the conditions for ruinous competition may well continue.[32] Professor D. Philip Locklin pointed out the potential for destructive rate competition in trucking almost twenty years ago.[33]

The draft report's tenth finding, that collective ratemaking has little salutary effect on the stability of rate levels, and that changes in rate levels are in response to changes in underlying cost conditions, reflects the commission's obvious belief that collective ratemaking is simply a cost-plus type of pricing process, which is patently incorrect. Previous studies examined the rate stability features of prices established through the collective ratemaking process, and shipper desires for such a rate practice, which in turn facilitates strategic planning for both in and outbound freight movements. Studies presented in the form of evidence before the Commission in Cambridge demonstrated that cost-plus rates are ineffective in motor transportation,[34] and that most shippers favor collective ratemaking because of the need for rate stability and price knowledge. Throughout the course of the hearings, the need for price information was emphasized because it is difficult to perceive how carriers can offer nation-wide service without being able to quote origin and destination prices to a shipper.

The eleventh finding, that "the conditions necessary for a successful exercise of predatory pricing strategies are not present in the industry; and, collective ratemaking has no demonstrable effect on the probable success of predatory behavior," obviously involves a new and innovative definition of predatory pricing.[35] Evidence of discounting and its subsequent impact upon small shippers and communities was introduced throughout the hearing, and if massive discounting, excess capacity, and virtually negative earnings fails to constitute the necessary conditions precedent for predatory pricing, then perhaps a novel definition of this form of price behavior has now been accepted in the field of economic theory. In that collective ratemaking employs the same standards as the ICC relative to rate reasonableness considerations, to find that the collective pricing process has no demonstrable effect on predatory pricing either involves a novel definition of the term or failure to clearly examine the prevailing economic conditions in the industry,[36] conditions which have existed for almost three years.

Finding number 12 deals with rate reasonableness. The Commission report states, "the collective ratemaking process is not designed to and does not have the wide-spread practical effect of preventing preference, prejudice or discrimination with respect to different shippers, shipments, and communities." Previous studies submitted to the commission clearly reveal that one reason few bureau protests of independent rate announcements occurred before 1977 was simply because bureaus employed the same statutory standards regarding rate discrimination, undue preference, prejudice, and discrimination as the Interstate Commerce Commission. Evidence presented before the commission in hearings held in Phoenix, Kansas City, Cambridge, and San Francisco clearly demonstrated that collective ratemaking is designed to prevent these abuses that are presently widespread in the industry.[37] A lacuna has been created in this area that clearly impacts upon small shippers and communities evidence of this fact was provided to the Commission at virtually all of its public hearings.[38] Even a facile examination of rate discounts based on volume and any subsequent impact on profits and cost differentials between small and large shippers supports this particular observation.[39] (In fact, a casual review of the fall 1982 issue of the Transportation Journal clearly reveals the blatant discrimination existing against small shippers and small communities as a result of the present pricing practices which are rampant throughout the industry.)

Finding number 13 of the draft report is somewhat amusing given other findings in the draft report. This finding simply states that, "small shippers and shippers in small communities pay the undiscounted class rates, i.e., the highest prevailing rates. Carriers generally find that traffic contributes revenues to overhead cost and they freely choose to continue providing such services." The finding obviously ignores the systems features of collective ratemaking, i.e., a system of freight rates for continuous service throughout the country that binds carriers to small communities. Rate discounting is truly pervasive, and the commission's finding is not universally true, but clearly demonstrates who pays for the current discounting practices taking places in the industry. As pointed out during the Kansas City hearing, small shippers and shippers in small communities are bearing an inordinate proportion of the systems capacity cost generated and created by monopsony shippers, a problem compounded by excess capacity in the industry.[13] Rate protection for small shippers appears to be decreasing dramatically.

The fourteenth finding in essence declares that general rate increases result in small shipments and shippers not being subsidized. There is no question but that this finding is essentially correct, but not in all instances; and the reasons for such action were explained to the commission during the Kansas City hearing. Small shippers and shipments are bearing more than their allocated capacity cost shares simply because liberalized market entry has affected traffic mix and loads by facilitating special commodity carriers to enter various markets. The capital intensive nature of LTL general commodity carriers was pointed out to the Commission. It was also pointed out that truck load freight was needed for load mix and cost consideration purposes. Rate and entry control must be exercised simultaneously if reasonable rates are to be achieved. Entry liberalization when combined with excess capacity is representing, and will continue to represent a cost which is borne by small shippers.[14] This position was emphasized by several academics testifying before the commission.[15]

A corollary to the fifteenth finding was the sixteenth finding of the commission, where almost ludicrously the report states that the commission found that neither adequate service nor reasonable rates for shippers or receivers in small communities is dependent upon the collective ratemaking process.[16] Furthermore, the Motor Carrier Ratemaking Study Commission report stated that while a large percentage of small community traffic moves in joint-line service provided by potentially competing carriers, all necessary arrangements for such service can be made efficiently and lawfully under full application of the antitrust laws."

Testimony, previous studies, and written submission certainly conflict with this finding.[17] Carriers are not only reserved concerning joint-line rates, but actual freight interchange between major and local carriers for service to small communities has declined substantially during recent years a harbinger of future decreases in interchange if antitrust immunity is eliminated.[18] The commission is also more than fully aware that nation-wide service exists only on paper, and although in practice the ICC persists in awarding such authority to common and contract carriers, no carrier is presently providing LTL general commodity service throughout this nation.

The three remaining findings appear to be mere statements, but the nineteenth finding is a statement to the effect that neither practical nor legal considerations would prevent carriers from establishing joint-line arrangements in the absence of antitrust immunity. A plethora of contrary evidence was presented to the Commission, but the Motor Carrier Ratemaking Study Commission's report states *arrangements*, not rates, which is a different phenomenon.

CONCLUSIONS

There is no question but that collective ratemaking is a controversial topic, and the Motor Carrier Ratemaking Study Commission's report has certainly contributed to rather than diminished the growing controversy. By accepting a highly questionable report, together with contested maneuverings in terms of commissioner votes and membership qualifications, the commission has not rendered a true public service to the American public in this debate. Fortunately, all the parties involved in this interminable debate are interested in achieving the same goals; providing an efficient transportation system by motor available to all citizens on an equal basis. One group believes America's institutions are capable of providing such a system, whereas the other group believes that market forces will simply produce a better transportation system.

The Motor Carrier Ratemaking Study Commission did not contribute to any meaningful solution to the collective ratemaking debate with its contentious report. By either purposefully ignoring the evidence or assigning disproportionate weights to testimony rendered, the Commission has elected to ignore or minimize past studies which clearly reveal the nature of the evidence which would be presented. Future scholars of public policy researching collective ratemaking will be and should be skeptical of the Commission's report, particularly if they have access to all data associated with the hearings and the myriad of submissions.

Ideally, statistical tests of certain hypotheses should be developed concerning market efficiency or lack of efficiency in terms of the actual issues that the commission is charged by law to address. That is to say, preceptions can be measured since no actual elimination has taken place, but samples from the universe of shippers clearly indicate a propensity favoring collective ratemaking and antitrust immunity. Definitions of efficiency, of course, will probably remain controversial, but hopefully some consensus can be attained. In any event, perceptions of users of the system (shippers) are important and should be carefully considered in collective ratemaking debates. Tests of hypotheses regarding shippers' perceptions of collective ratemaking over time certainly indicate that most shippers believe efficiency was attainable under collective ratemaking.

It is unfortunate that a needed public commission such as the Motor Carrier Ratemaking Study Commission has issued such a tainted report which is as controversial as the various issues it addresses. Unfortunately, future reliance upon commission reports as accurate indicators of issues and the intensity of feelings associated with these issues may well be seriously discounted by future students seeking the true issues and positions of various groups associated with the collective ratemaking debate.

FOOTNOTES

[1] Public Law 96-296.

[2] Motor Carrier Ratemaking Study Commission hearings, Washington, D.C., November 18, 1982. See statement of witnesses from the U.S. Department of Transportation.

[3] See Grant M. Davis, editor, *Collective Ratemaking in the Motor Carrier Industry: Implications to the American Public* (Danville, Illinois: Interstate Publishers, 1980), Chapter 6.

[4] Meeting of the Motor Carrier Ratemaking Study Commission, Washington, D.C., December 14, 1982. Senators Kennedy and Packwood and public members Etler, Thomas and Warren voted to accept the report after two amendments were proffered. Senator Cannon and Congressmen Seiberling, Shuster and Roe and public member Murphy voted not to accept the staff's preliminary draft report.

[5] Consult ICC Ex Parte 297, Sub. 4, for example.

[6] Not only did these publications examine the major issues involved in collective ratemaking, but also dealt with specific problems such as the logistical implications of collective ratemaking and long-run strategic planning. See for instance Grant M. Davis, "Logistical Planning and the Common Carrier Concept," in *Logistics: Issues for the 1980's* (Shaker Heights, Ohio: Corinthian Press, 1982), pp. 113-123; and "Surface Transportation Regulation: A Succinct Analysis," *ICC Practitioners' Journal*, Vol. 47, No. 1 (November-December, 1979), pp. 55-66; ad infinitum.

[7] Grant M. Davis and John E. Dillard, "Collective Ratemaking: Does It Have a Future in the Trucking Industry?" *ICC Practitioners' Journal*, Vol. 48, No. 1 (October-November, 1980) pp 1113-1119.

[8] Ibid.

[9] Given the nature of the research in this area, the positions of the witnesses should have been expected. In fact, a review of the appearances listing in each public hearing reveals the magnitude of support for collective ratemaking, even though the Commission assiduously sought to balance each hearing with witnesses both supporting and opposing the process. The Commission also correctly attempted to structure the subjects to be examined because of time constraints established by Congress. Interestingly, oral testimony before the Commission was by invitation only. For an example of the opposition to collective ratemaking, see National Transportation Policy Study Commission, *National Transportation Policies*, (Washington, D.C.: National Transportation Policy Study Commission, June, 1979), p. 280.

[10] *Supra*, note 4. Questions of fairness, moreover, were raised before the Commission even voted; consult "MCCC Chairman Challenges Article on Collective Rates," *Transport Topics* (November 15, 1982), p. 8.

[11] Not only were the technical issues addressed, but national defense, regional development, regulated vs. non-regulated transportation, deregulation vs. regulation, ERISA, etc., were raised, not to mention serious problems concerning monopsony and the Robinson-Patman Act. See transcript of hearings, *Motor Carrier Ratemaking Study Commission*, Washington, D.C., November 18, 1982.

[12] Voting to accept the report as drafted were Senators Packwood, Goldwater and Kennedy and public members Warren, Etler and Thomas, with Congressmen Roe, Seiberling and Shuster and public member Murphy voting against accepting the draft report. A minority position is being prepared for submission to the Senate Committee on Commerce, Science and Transportation.

[13] *Supra*, note 6. Also see Grant M. Davis, *Motor Carrier Economics, Regulation, and Operation* (Washington, D.C.: University Press of America, 1981), Chapter 7.

[14] Ibid. Also, consult Joseph L. Cavinato and Gary B. Kogan, "An Assessment of the Impacts From Repeal of Section 10706 (Antitrust Immunity) Upon the Motor Carrier Industry and Its Users," *ICC Practitioners' Journal*, Vol. 47, No. 4 (May-June, 1980), pp. 427-448.

[15] Grant M. Davis and Charles S. Sherwood, *Rate Bureaus and Antitrust Conflicts in Transportation: Public Policy Issues* (New York: Praeger Publishers, 1975), Chapters 1 and 2; also see D. Philip Locklin, *Economics of Transportation* (6th ed.; Homewood, Illinois: Richard D. Irwin, Inc., 1966), pp. 290-300; also consult statement of William B. Tye, "Regulatory Reform and the Trucking Industry: An Evaluation of the Motor Carrier Act of 1980," and his subsequent statement before the *Motor Carrier Ratemaking Study Commission*, Cambridge, March 10, 1982.

[16] Consult statements of Paul Dake and Andrew Popper before the *Motor Carrier Ratemaking Study Commission*, Cambridge, Mass., March 10, 1982, p. 334 and p. 340.

[17] Davis and Dillard, loc. cit.; and Cavinato and Kogan, loc. cit.

[18] See, for example, the statements of Stan Mills of the University of Missouri, and Donald V. Harper of the University of Minnesota, hearings

before the *Motor Carrier Ratemaking Study Commission*, Kansas City, Missouri, March 8, 1982.

[illegible] Statement of Professors Roy Sampson, University of Oregon, and Charles S. Sherwood, California State University, hearings before the *Motor Carrier Ratemaking Study Commission*, San Francisco, California, February 12, 1982.

[illegible] A considerable amount of quantitative data exists regarding the supply of transportation, only estimates exist regarding demand. See George W. Wilson, *Economic Analysis of Intercity Freight Transportation* (Bloomington, Indiana: Indiana University Press, 1980), p. 50.

[illegible] Consult statement of Dabney Waring, hearing before the *Motor Carrier Ratemaking Study Commission*, Kansas City, Missouri, March 8, 1982.

[illegible] Contract carriers offer specialized service that provides shippers with unique price/quality options. 49 C.F.R. 1041.

[illegible] Hearings before the *Motor Carrier Ratemaking Study Commission*, Akron, Ohio, January 29, 1982.

[illegible] Shipper associations and traffic leagues frequently become involved in rate matters. Consult statement of Richard O. Velton, hearings before the *Motor Carrier Ratemaking Study Commission*, Washington, D.C., November 5, 1981.

[illegible] The ICC can establish maximum, minimum, or ranges of rates in addition to rejecting rates or suspending rates. The Motor Carrier Act permits carriers to a zone of rate flexibility of ± 10% of rates in effect on July 1, 1980. Obviously, the Commission has elected not to become overly involved in motor carrier rate matters.

[illegible] See Davis and Sherwood, *Antitrust Conflicts in Transportation*, loc. cit.

[illegible] Supra, note 16.

[illegible] Ibid. Also see Martin T. Farris, "Discrimination in Transportation and Antitrust Laws," in Davis, *Collective Ratemaking in the Motor Carrier Industry*, op. cit., pp. 71-89.

[illegible] Consult statements of John W. McFadden, Donald V. Harper, Edmund A. Nightingale, Stanley J. Mills, and James P. Rakowski, before the *Motor Carrier Ratemaking Study Commission*, Kansas City, Kansas, March 5, 1982.

[illegible] See "No Protection for the Inefficient Carrier in Collective Ratemaking," statement of Dabney T. Waring, Jr., before the *Motor Carrier Ratemaking Study Commission*, Kansas City, Missouri, March 8, 1982.

[illegible] In fact, see Senator CANNON's prepared amendment before the *Motor Carrier Ratemaking Study Commission* meeting in Washington, D.C., December 9, 1982, where on the subject of liberalized market entry a rule-making was not adopted when the Commission voted five-to-five on the amendment.

[illegible] Consult statement of Martin T. Farris, hearing before the *Motor Carrier Ratemaking Study Commission*, Phoenix, Arizona, December, 1981. Also see statement of Irwin Silberman submitted to the *Motor Carrier Ratemaking Study Commission*, July, 1982, wherein the financial conditions existing in the industry were enumerated and analyzed.

[illegible] Locklin, op. cit., p. 663, where Professor Locklin pointed out, ". . . The ruinous type of competition does develop, discrimination in rates does appear; the condition for overcapacity does not correct itself automatically; and the struggle for service in the face of inadequate revenues leads to deterioration of safety standards, evasion of safety regulation, financial responsibility, and generally unsatisfactory service."

[illegible] Consult statement of Paul Roberts, hearing before the *Motor Carrier Ratemaking Study Commission*, Cambridge, Mass., March 18, 1982.

[illegible] Consult notes 23 and 28.

[illegible] Also, see statement of Irwin E. Silberman before the Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, U.S. Senate, December 14, 1982.

[illegible] Consult hearing transcripts, Motor Carrier Ratemaking Study Commission for these hearings. Also see Donald V. Harper, "Consequences of Reform of Federal Economic Regulation of the Motor Trucking Industry," *Transportation Journal*, Vol. 21, No. 4 (Summer, 1982), pp. 35-58. Regarding rate bureau standards, see Grant M. Davis and William Cunningham, "Deregulation—A Green Light for Trucking Efficiency—A Comment," *Regulation* (November-December, 1982), pp. 4-6.

[illegible] Ibid.

[illegible] The disinterested reader needs only to examine the discount tariffs currently in effect in the industry for ample evidence of rate discrimination activities.

[illegible] Supra, note 12.

[illegible] Davis and Cunningham, loc. cit.

[illegible] Supra, notes 10 and 13.

[illegible] Robinson, Costello and Kragen, loc. cit.; also consult William B. Wagner and Michael L. Dunn, "A Perspective View Toward Deregulation of Motor Common Carrier Entry," *ICC Practitioners' Journal*, Vol. 48, No. 4 (May-June, 1981), pp. 408-430; David and Dillard, loc. cit.; and Michael W. Pustay, "Transportation Regulation and Service to Small Businesses: The Case for Contract Carriage," *Transportation Journal*, Vol. 22, No. 1 (Fall, 1982), pp. 11-18.

[illegible] See statements of *Professor David L. Shrock, Ronald V. Bisdo, and Tim Rossy, before the Motor Carrier Ratemaking Study Commission*, Phoenix, Arizona, December 16, 1981, and Dale C. Anderson and Eleno Palma, "Implications of Motor Carrier Deregulation for a Case Study Rural Community," *Proceedings—Transportation Research Forum*, (Oxford, Indiana: Richard B. Cross Co., 1981), pp. 33-40.

[illegible] Several small carriers in Arkansas, for example, report 40 percent to 60 percent declines in interchange freight to small communities.●

NATIONAL POLICE WEEK

SPEECH OF

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday May 18, 1983

● Mr. CONTE. Mr. Speaker, I rise to join my colleagues in honoring this Nation's 528,000 law enforcement officers. As we all know, this week has been designated "National Police Week" and calls upon each and everyone of us to recognize and honor these important men and women so vital to the American principles of law and order.

I was a Member of this Congress when 20 years ago, President John F. Kennedy signed into law legislation designating May 15 as "Police Memorial Day" and the week including May 15 as "National Police Week." Since then, Congress has consistently been a strong supporter of the police officers of this Nation. In 1976, for example, I cosponsored, and Congress passed, legislation designed to provide benefits to the survivors of police officers killed in the line of duty. Since its inception, the fund has provided over $70 million to help surviving families. More recently, our distinguished colleague from Connecticut, BARBARA KENNELLY, introduced H.R. 3276, a bill to increase death benefit to families of police officers. This is a tradition Congress can be proud of and this is not a time for us to ignore that tradition.

Law enforcement is not easy work. Hours are long, duties are dangerous, and well-done jobs too often go unnoticed. Despite these odds, the number of crimes in the United States have actually dropped between 1981 and 1982. This is most certainly a noteworthy achievement.

The police officers of this Nation deserve a great deal of credit for their hard work. Once again, I urge you to join with me in honoring these important guardians of the American principles of law and order.●

NATIONAL POLICE WEEK

SPEECH OF

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 18, 1983

● Mr. BORSKI. Mr. Speaker, this week marks the annual observance of National Police Week. I wish to pay tribute to the many achievements and sacrifices made by our law enforcement officers in their efforts to fight crime. Too often their important contribution to this Nation's security and well-being have been taken for granted.

The job of our policemen is more difficult than ever before. Although the number of serious crimes increased by 22 percent between 1976 and 1981, the ranks of our Nation's police declined by 8 percent. Today's policemen are required to do much more than patrol the streets and apprehend criminals. They must spend a great deal of time answering civil complaints and performing specialized duties such as records management, communications, and traffic control.

Despite these problems, the rate of serious crime, including murder, rape, and robbery, has declined somewhat since 1981. The police officer deserves much of the credit for this achievement.

In this era of scarce resources, Federal, State, and local assistance to help our police officers fight crime has been reduced considerably. Our police departments cannot hire the additional officers they need and cannot fully equip existing forces. We should not forget that the average police officer today earns only $18,000 annually after 5 years service in a profession wrought with danger and hardship. Last year 162 officers were killed in the line of duty.

I intend to lend my full support toward increasing the resources available to our law enforcement agencies and making their job as safe as possible. I have cosponsored H.R. 953, the Law Enforcement Officers Protection Act of 1983. This legislation would ban new ammunition capable of penetrating the bullet-proof vests now worn by our police officers.

Police work is one of the noblest of professions. By commemorating National Police Week, we renew our commitment to and admiration for the men and women who are our first line of defense against crime.●

STATEMENT OF
BYRON RAZNICK
REPRESENTING
INTERSTATE CARRIERS CONFERENCE
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
HOUSE OF REPRESENTATIVES
ON
OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980
October 25, 1983

Mr. Chairman and Members of the Subcommittee, I am Byron Ra[illegible]ick, president of C.O.D.E., Inc. (Chicago-Omaha-Denver Express), based in Denver, Colorado. I am appearing today for the Interstate Carriers Conference,* an affiliate of the American Trucking Associations, whose earlier statement we support.

The Conference is composed of some 750 common and contract motor carriers throughout the United States that carry all types of freight. They range in size from those with only a few units of equipment to companies operating 500 or more vehicles. They are equally varied in terms of operating revenues, approximately 30 percent having gross revenues of less than $1,000,000 annually and 20 percent having more than $10,000,000.

In supporting the final form of the 1980 Act, and since that time, the Conference has not in any way favored a return to regulation of old. On the other hand, however, we do not at this time believe sweeping, total deregulation of the industry is in the best interest of anybody--carriers, shippers or the public.

Proponents of instantaneously eliminating the Interstate Commerce Commission or Part II of the Interstate Commerce Act by a stroke of the pen fail to recognize or choose to ignore the numerous bricks of legislation and regulation carefully built through the years in an interconnected system. We have identified 122 such provisions in the appendix to this statement.

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* Formed July 1, 1983, through merger of the Common Carrier Conference-Irregular Route and the Contract Carrier Conference.

To torpedo that system in one fell swoop would ensure that within months the Congress would be besieged with plaintive cries from all sides for new regulatory legislation to cure one resurgent problem after another.

Yet deregulation of motor carriage is clearly the goal of the Interstate Commerce Commission, as now constituted.

In previous testimony before this Committee, we focused on the Commission's implementation of provisions of the 1980 Act relating to entry and rate regulation. As the Committee is well aware, there currently is virtually no regulation of entry and little, if any, regulation of rates.

Now, in the Commission's zeal to totally deregulate motor carrier transportation by administrative fiat, a number of new issues--more important issues--have come to the forefront. They concern the Commission's total abrogation of any concern over safety of operations on the nation's highways, its blatant regulatory preference for transportation by rail carriers to the severe competitive disadvantage of motor carriers, and its refusal to obey and implement specific decisions by federal courts.

THE ISSUE OF PUBLIC SAFETY

The Commission's own statistics show that during the 12-month period ending June 30, 1983, it granted operating authorities to 4,793 new carriers. The total number of motor carriers authorized to perform services by the Commission, as of that date, was 25,342. At the close of fiscal 1980 the figure for total authorized motor carriers was 17,721. Thus, despite the severe recession of 1980-82, the Commission has caused the nation's highways to become far more crowded.

Under the law, decisions on whether or not to award a new carrier authority require the Commission to make a finding that such carrier is "fit, willing and able." With regard to a carrier's qualification to conduct safe operations, however, this statutory burden is deemed to be met by a new carrier simply by advising the Commission that it is "familiar" with the Department of Transportation's safety regulations and is "willing" to comply with them. It is not required that this new carrier demonstrate a knowledge of applicable regulations, submit records of compliance, or take any other affirmative action to demonstrate its qualifications.

It is only required that this bare statement of "familiarity" be included in the applicant's statement accompanying a request for operating authority.[1] At page 6 of the cited decision, the Commission specifically abandons any responsibility for promoting safety of operations by indicating that the Department of Transportation has jurisdiction over such matters and that such agency's "primary jurisdiction and expertise" will be relied upon. No prior expression of satisfactory standing by the Department of Transportation is requested, expected or required.

Perhaps of more significance than the manner by which the Commission evaluates the safety qualification of carriers seeking new operating authority is a recent Commission action relative to its jurisdiction over practices of regulated carriers involving the lease of equipment and drivers in order to perform transportation services. In that action the Commission proposed to drop from its regulations the requirement that leases of equipment with drivers entered into by regulated carriers be for a period of at least 30 days.[2]

The regulation requiring leases of 30 days originated in 1951 when the Commission commenced regulating leasing practices of motor carriers. In the original report, Lease and Interchange of Vehicles by Motor Carriers, 52 M.C.C. 675, 725 (1951), the Commission stated its reasons for requiring the 30-day minimum:

> We are convinced, however, that trip-leasing [that is, the lease of equipment and drivers for a single trip] and especially trip-leasing of equipment that is operated for the lessee by the owner, or employees of the owner, is inimical to sound regulation and proper administration of the provisions of Part II of the Act and of our safety regulations. The rules prescribed herein will provide that leases of such equipment apply for a definite period. Some minimum period is necessary to ensure proper inspection of equipment and a check of

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[1] See, generally, Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property), decision of the full Commission served August 8, 1983 (not printed), pp. 5-6.

[2] Ex Parte MC-43 (Sub-No. 15), Elimination of 30-Day Leasing Requirement (not printed), served August 29, 1983.

> the qualifications of the driver, particularly where the latter is not an employee of the lessee, and we find that a minimum period of 30 days would be reasonable. (Emphasis added)

Thus, the only specifically stated rationale for the requirement of a 30-day period for lease of equipment and driver is concern over safety of operations.

The Commission abandons any pretense at promoting safe operations on the Nation's highways at page 5 of its current decision by advising:

> In 1966 all of the Commission's functions, powers and duties relating to motor vehicle safety were transferred to the Department of Transportation. To the extent that safety concerns were a motivation for the 30-day rule, even if those concerns were still valid, the transfer of safety jurisdiction would make DOT the appropriate agency to maintain such a rule.

The Commission is mistaken both with respect to its analysis and to the effect of the 1966 legislation. First of all, it is the Commission, not the Department of Transportation, that is charged by statute (See, 49 U.S.C. § 11107) with regulating the leasing practices of for-hire carriers certificated by the Commission. More importantly, the Congress, in enacting both the 1935 and 1980 Motor Carrier Acts, established a transportation policy that requires the Interstate Commerce Commission in regulating motor carrier transportation to, among other things:

> ...promote safe...transportation --
>
> ...improve and maintain a sound, safe and competitive privately-owned motor carrier system.

Can it be said that the cited activities of the Commission are in furtherance of this policy? The Commission, on the one hand, increases substantially the number of authorized carriers permitted to operate on the highways. The Commission also reduces the lease period requirement so as to remove virtually any opportunity for regulated carriers employing leased operators to ensure proper qualification and equipment compliance with applicable regulations, while simultaneously exacerbating the task of the Department of Transportation.

How little the Commission concerns itself with safety is shown when it points its finger at the Department of Transportation. Safety is an ICC responsibility. The current Commission appointees, though, are acting in a fashion that infers that Congressional intent requires total elimination of motor carrier regulation. Needless to say, we cannot agree with that irresponsible approach.

UNFAIR FAVORITISM OF RAIL TRANSPORTATION TO THE COMPETITIVE DISADVANTAGE OF MOTOR CARRIER TRANSPORTATION

There appears to be little question in the minds of most familiar with the status of regulation of the transportation industry that since 1980 the Commission has, by a variety of actions, unfairly and unjustifiably favored and improved the competitive position of rail carriers to the direct and indeed disastrous detriment of motor carriers.

These actions commenced when the Commission exempted from rate regulation the transportation of trailers and containers on flatcars by rail carriers, as well as the motor carrier transportation of such trailers and containers when the motor carrier transportation was performed by the railroad itself.[3]

Thus, rail carriers could offer shippers direct door-to-door service, exempt from rate regulation, with changes in such rates effected on a moment's notice when needed to respond to competition.

Motor carriers, on the other hand, were required to publish rates for the highway transportation of such trailers and containers, and could only compete with rail carriers on an extremely limited and in fact unfeasible basis.

The Commission could have resolved this competitive inequity, and in fact it appeared that precisely such competitive balancing was intended by the Commission when it issued a proposal that would have extended the exemption granted to rail carriers to all motor carriers, so that all aspects of TOFC/COFC transportation would be exempt from rate regulation. To date, some 31 months later, the Commission has yet to issue a decision in this rulemaking proceeding.[4]

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[3] Ex Parte No. 230 (Sub-No. 5), Improvement of Trailer on Flatcar and Container on Flatcar Regulation, 46 Fed. Reg. 14348, Feb. 27, 1981.

[4] Notice of Proposed Rulemaking in Ex Parte No. 230 (Sub-No. 6), also entitled Improvement of TOFC/COFC Regulation, issued Feb. 19, 1981.

For that 31-month period, motor carriers such as the members of the Conference, have been, practically speaking, unable to compete in this market. Available statistics from the Commission and other sources reflect the remarkable surge of TOFC and COFC traffic handled by rail carriers.

The Commission's unfair favoritism for rail carriers did not stop with "piggyback" traffic: In one decision, the Commission determined to exempt from economic regulation the transportation of any commodity by rail carrier when such transportation service was provided in boxcars.[5/] In a second decision, the Commission proposes to award similar exemption relief to all rail transportation of frozen foods.[6/] In both instances, the transportation of similar commodities and the provision of similar services by motor carriers are fully regulated economically, with rates requiring to be published, altered only upon statutory notice or by special permission application, and bound by the "reasonableness" requirements of provisions of Title 49, United States Code.

Heretofore, the Commission had employed its rail exemption authority to address circumstances where rail transportation of particular commodities remained regulated while motor transportation of similar commodities was exempt (agricultural commodities, as an example). The current Commission has gone well beyond that and, in the decisions just cited, has in effect deregulated substantially all transportation services for rail carriers where any motor carrier competition exists.

Not only has the Commission favored actual rail transportation with substantial competitive advantages, it has, additionally, by a series of decisions since 1981, allowed rail carriers to compete directly with independent motor carriers through either railroad subsidiary motor carriers or by awarding rail carriers themselves motor carrier operating authorities.

Historically, the motor carrier subsidiaries of railroads were awarded operating authority generally restricted so as to permit such services to be employed only in conjunction with the rail transportation operations. This was known as the "special circumstances" doctrine. In a Notice of Proposed Policy

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[5/] Ex Parte No. 346 (Sub-No. 8), Exemption from Regulation - Boxcar Traffic, served May 2, 1983.

[6/] Ex Parte No. 346 (Sub-No. 15), Exemption of Rail Frozen Food Transportation from Regulation, served Feb. 9, 1983.

Statement issued in October of 1981, the Commission proposed deletion of this "special circumstances" doctrine from its policy, thereby authorizing rail carrier subsidiaries to apply for and receive unrestricted motor carrier operating licenses. By decision served January 6, 1983, the Commission approved such policy.[7/]

Not content with this form of encouraged vertical integration in the transportation industry, the Commission proposed on August 17, 1983, a further modification of this policy.[8/] In such decision, the Commission removed limitations on acquisitions of motor carriers by rail carriers. Previously, Section 11344(c) of Title 49, United States Code, had been interpreted by the Commission so as to permit such acquisition only where the motor carrier transportation would be "auxiliary or supplemental to" the rail carrier service. The Commission, with typical self-fulfilling rationale, reasoned that its decision in Ex Parte MC-156 allowing unrestricted operating authority applications by rail carriers and their subsidiaries likewise required the removal of any limitation on acquisition by rail carriers of independent motor carriers.

To seemingly demonstrate the omnipotence of its decision-making powers, one month following its decision in Ex Parte No. 438 (Sept. 19, 1983) the Commission approved the acquisition by Burlington Northern Railroad of Federal Transport, Inc.--a non-operating motor carrier that held as its sole asset a non-radial, nationwide authority for transporting general commodities. According to the decision BN expressed its intent and purpose in acquiring Federal not to use motor carrier transportation "in its operations," but precisely to establish a carrier independent from Burlington Northern and which would not be subject to "shipper confusion."

Thus, the Commission authorized the transaction despite the fact that its very purpose was to permit BN to conduct motor carrier operations totally divorced and independent from its rail operations and in spite of the operations of its already existing motor carrier subsidiary (BN Transport)--a Class 1 motor carrier already holding nationwide general commodities authority. No reading of the applicable statutory language appears to justify such a decision.

[7/] Ex Parte No. MC-156, Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates, 132 M.C.C. 978 (1983).

[8/] Ex Parte No. 438, Acquisition of Motor Carriers by Railroads.

Again, these Commission actions must be viewed and examined in connection with what this Congress has adopted as its transportation policy. In 1980, the Congress substantially rewrote the transportation policy as it was applicable to motor carriers. Section 10101(a)(7) was added, so that with respect to the transportation of property by motor carrier the Commission was obligated to regulate so as to ensure its preservation and adequate profit levels and encourage efficiency, among other goals. What the Congress did not change, however, was the basic policy requiring the Commission to "...recognize and preserve the inherent advantage of each mode of transportation."

By discriminating against independent motor carriers in forms of regulation, by encouraging vertical integration of a type and degree not contemplated by the Congress and, in fact, by refusing to take competitive "balancing" actions permitted, the Commission is in direct violation of the previously cited policy.

THE ISSUE OF OBEDIENCE TO COURT ORDERS

Reference was made at the outset to the Commission's refusal to obey and implement specific decisions of United States courts.

While to our knowledge this has happened a number of times, we shall provide the Committee with perhaps the best example and one that has been most pervasive in effect.

In an attempt to implement the Motor Carrier Act of 1980 with regard to the stated Congressional policy concerning entry regulation relaxation, the Commission promulgated rules and policies.[9] Among other aspects of this decision was the virtual requirement that carriers when seeking new operating authority conform their requests to rigid parameters set forth by the Commission both as to commodity, classification and territorial scope. Certain parties appealed such decision to Federal court, and in 1981 the United States Court of Appeals for the Fifth Circuit directed that the Commission revise certain policies contained in Ex Parte 55 (Sub-No. 43A).

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[9] Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority 45 F.F. 86798, (Dec. 31, 1980).

Among the instructions by the court was one that would prohibit the Commission from requiring carriers to accept operating authority of broadened scope and including authority to transport commodities for which the applicant neither had requested nor deemed itself qualified. The petitioners in that court decision were required to return to the Court of Appeals for issuance of a writ of mandamus because the Commission had refused to implement the court's decision or to follow its dictates.[10/]

Nearly two years subsequent to the Fifth Circuit's reversal of the Commission's policy in this proceeding, that agency on August 8, 1983, issued a notice of proposed rulemaking purporting to comply with the court's order. However, the Commission continued to adhere to the position that it could require carriers to accept operating authority they had neither sought nor wished to receive nor felt qualified to operate. In this specific regard, the type of authority under consideration is authority to transport bulk commodities.

The Commission maintained in its August 8 decision the position it had adopted previously--that except for applications for authority to transport "general commodities" no limitation or restriction preventing a recipient of a certificate or permit from transporting bulk commodities would be imposed. Chairman Reese H. Taylor of the Commission dissented from that decision, specifically referring to the Fifth Circuit's decision that "bulk service authority shall not be extended to carriers who cannot demonstrate that they are fit, willing and able to provide" such service.

As Chairman Taylor noted, such was directly contrary to the court's decision, and he concluded his dissent by advising:

> Moreover, the majority's decision to routinely grant bulk authority without regard to the facts of the proceeding is precisely what the Fifth Circuit condemned. Under the proposed rules, applicants will continue to request authority, not because they desire the authority, but because they are compelled to do so by the Commission. The Commission, in turn, will grant such authority regardless of whether the statutory requirements have been met.

[10/] The writ of mandamus was issued by the court at 669 F. 2d 957 (1982), cert. denied 51 U.S.L.W. 3647 (1983).

This policy, of course, is that same policy that has been applied since the initial 1980 decision, subsequently set aside by the court. A very recent example of this policy in action is a decision in which a division of the Commission consisting of three commissioners denied an administrative appeal filed solely for the purpose of requiring the Commission to restrict the award of authority to transport "building materials" against the transportation of bulk commodities.[11] The Commission, in adhering to its previously described policy, refused to do so despite the fact that the applicant had specifically denied an interest in receiving such authority. At page 2 of the order, the Commission concludes its decision by advising applicant that it:

> . . . has 30 days from the service decision to either accept or reject the authorization in total. Its acceptance, however, is expressly subject to and conditioned upon its willingness to accept the authority without a bulk restriction.

Thus, either the applicant accepts the certificate including bulk authority or it suffers the loss of all of the authority applied for, supported by public evidence, and unopposed by the party protesting the application.

The point to be made from this discussion is that it does not appear that the Federal courts are any longer a viable avenue of relief or revenue so as to insure proper implementation, interpretation and enforcement of the Motor Carrier Act of 1980 in line with Congressional intent. It appears that only specific direct Congressional action will result in the proper discharge by the Interstate Commmerce Commission of its obligations under that statute as this Congress intended.

ONEROUS STATE TAXATION AND REGULATION

Mr. Chairman, I would like to touch on this subject only briefly in conclusion.

In Section 19 of the Motor Carrier Act of 1980, the Congress found "that the individual State regulations and requirements imposed upon interstate motor carriers regarding licensing, registration, and filings are in many instances confusing, lacking in uniformity, unnecessarily duplicative and burdensome and that it is in the national interest to minimize the burdens of such regulations while at the same time preserving the legitimate interests of the State in such regulation."

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[11] John S. Furdek, Extention - Building Materials, MC-156255, Sub. 1, (served Sept. 19, 1983).

Mr. Chairman, the reporting and taxation burdens imposed on interstate trucking by the individual States have increased substantially since you made those findings, making us ever more desperate for a solution.

I cannot at this point state with certainty what our eventual recommendations to you will be, but there seems to be emerging a recognition that relief can come only if the Congress prescribes (1) a single federal license plate for each truck and (2) preemption of state taxing authority over interstate carriers, handled by a federal agency that would reimburse the states appropriately.

We would welcome the opportunity to work with the Committee and the staff to develop appropriate legislative relief.

# # # # #

APPENDIX

PRESENT PROVISIONS IN INTERSTATE COMMERCE ACT PERTAINING TO MOTOR CARRIER REGULATION

§ 10101	Transportation Policy
§ 10523	Exempt Motor Vehicle Transportation in Terminal Areas
§ 10526	Miscellaneous Motor Carrier Transportation Exemptions, such as school buses, taxis (six or less passengers), hotel transportation, etc.
§ 10528	Mixed Loads of Regulated and Unregulated Property
§ 10701	Standards for Rates Classifications, Through Routes Rules and Practices
§ 10702	Authority for Carriers to Establish Rates Classification Rules and Practices
§ 10703	Authority for Carriers to Establish Through Routes
§ 10704	Authority and Criteria: Rates Classifications, Rules and Practices Prescribed by Interstate Commerce Commission
§ 10705	Authority: Through Routes Joint Classifications Rates and Divisions Prescribed by Interstate Commerce Commission
§ 10706	Rate Agreements: Exemption from Antitrust Law
§ 10708	Investigation and Suspension of New Non-Rail Carrier Rates, Classifications, Rules and Practices
§ 10721	Government Traffic
§ 10730	Rates and Liability Based on Value
§ 10732	Food and Grocery Transportation
§ 10734	Household Goods Rates - Estimates; Guarantees of Service
§ 10741	Prohibitions Against Discrimination by Common Carriers
§ 10743	Payment of Rates
§ 10744	Liability for Payment of Rates

§ 10747	Transportation Services or Facilities Furnished by Shipper
§ 10751	Business Entertainment Expenses
§ 10761	Transportation Prohibited Without Tariff
§ 10762	General Tariff Requirements
§ 10921	Requirement for Certificate, Permit or Lease
§ 10922	Certificates of Motor and Water Common Carriers
§ 10923	Permits of Motor and Water Contract Carriers and Freight Forwarders
§ 10924	Licenses of Motor Carrier Brokers
§ 10925	Effective Periods of Certificates, Permits and Licenses
§ 10926	Transfers of Certificates and Permits
§ 10927	Security of Motor Carriers, Brokers and Freight Forwarders
§ 10928	Temporary Authority for Motor and Water Carriers
§ 10930	Limitations on Certificates and Permits
§ 10931	Motor Common Carriers Providing Transportation Entirely in One State
§ 10934	Household Goods Agents
§ 11101	Providing Transportation and Service
§ 11102	Classification of Carriers
§ 11106	Identification of Motor Vehicles
§ 11107	Leased Motor Vehicles
§ 11109	Loading and Unloading of Motor Vehicles
§ 11110	Household Goods Carriers' Operations
§ 11145	Reports by Carriers, Lessors and Associations
§ 11304	Security Interest in Certain Motor Vehicles
§ 11323	Limitation on Ownership of Other Carriers by Freight Forwarders
§ 11341	Scope of Authority (Relating to Combinations)

§ 11343	Consolidation, Merger, and Acquisition of Control
§ 11344	Consolidation, Merger, and Acquisition of Control: General Procedure and Conditions of Approval
§ 11345a	Consolidation, Merger, and Acquisition of Control: Motor Carrier of Property Procedure
§ 11349	Temporary Operating Approval for Transactions Involving Motor and Water Carriers
§ 11501	Interstate Commerce Commission Authority Over Intrastate Transportation
§ 11502	Conferences and Joint Hearings with State Authorities
§ 11503a	Tax Discrimination Against Motor Carrier Transportation of Property
§ 11504	Withholding State and Local Income Tax by Certain Carriers
§ 11506	Registration of Motor Carriers by a State
§ 11701	General Authority (Relative to Enforcement: Investigations, Rights, and Remedies)
§ 11702	Enforcement by the Interstate Commerce Commission
§ 11703	Enforcement by the Attorney General
§ 11705	Rights and Remedies of Persons Injured by Certain Carriers
§ 11706	Limitation on Actions by and Against Common Carriers
§ 11707	Liability of Common Carriers Under Receipts and Bills of Lading
§ 11708	Private Enforcement: Motor Carrier and Freight Forwarder Licensing
§ 11711	Dispute Settlement Program for Household Goods Carriers
§ 11901	General Civil Penalties
§ 11902	Civil Penalty for Accepting Rebates from Common Carrier
§ 11902a	Penalties for Violations of Rules Relating to Loading and Unloading Motor Vehicles
§ 11903	Rate, Discrimination, and Tariff Violations

§ 11904	Additional Rate and Discrimination Violations
§ 11909	Recordkeeping and Reporting Vioaltions
§ 11910	Unlawful Disclosure of Information
§ 11913	Disobedience to Subpoenas
§ 11914	General Criminal Penalty When Specific Penalty Not Provided
§ 11915	Punishment of Corporation for Violations Committed by Certain Individuals
§ 11916	Conclusiveness of Rates in Certain Prosecutions
§ 11917	Weight Bumping in Household Goods Transportation

PRESENT ICC REGULATIONS PERTAINING TO MOTOR CARRIER OPERATIONS

49 C.F.R. § 1005	Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage
49 C.F.R. § 1008	Procedures Governing the Processing, Investigation, Disposition of Overcharge, Duplicate Payment, or Overcollection Claims
49 C.F.R. § 1010	Competitive Bids
49 C.F.R. § 1041	Interpretation of Certificates and Permits
49 C.F.R. § 1042	Motor Carrier Routing Regulations
49 C.F.R. § 1043	Surety Bonds and Policies of Insurance
49 C.F.R. § 1044	Designation of Process Agent by Motor Carrier
49 C.F.R. § 1047	Exemptions
49 C.F.R. § 1048	Commercial Zones
49 C.F.R. § 1049	Terminal Area
49 C.F.R. § 1050	Motor Carrier Operations in the State of Hawaii
49 C.F.R. § 1051	Information Required on Receipts and Bills
49 C.F.R. § 1052	Handling of C.O.D. Shipments
49 C.F.R. § 1053	Contracts for Transportation of Property
49 C.F.R. § 1056	Transportation of Household Goods in Interstate or Foreign Commerce
49 C.F.R. § 1057	Lease and Interchange of Vehicles
49 C.F.R. § 1058	Identification of Vehicles
49 C.F.R. § 1059	Embargoes
49 C.F.R. § 1065	Gateways and Tacking - Irregular Route Motor Common Carriers of Property
49 C.F.R. § 1067	Fitness Flagging Procedures
49 C.F.R. § 1101	Temporary Authorities and Approvals

49 C.F.R. § 1104	Procedures to be Followed in Motor Carrier Revenue Proceedings
49 C.F.R. § 1131	Temporary Authority Applications Under Section 210a(a) of the Interstate Commerce Act
49 C.F.R. § 1132	Transfers of Operating Rights
49 C.F.R. § 1134	Control or Consolidation of Motor Carriers of Property
49 C.F.R. § 1135	Corporate Reorganizations of Motor Carriers
49 C.F.R. § 1137	Removal of Restrictions from Authorities of Motor Carriers of Property
49 C.F.R. § 1138	Owner-Operator Food Transportation
49 C.F.R. § 1139	Policy Statement on Motor Carrier Pooling Application
49 C.F.R. § 1200	General Accounting Regulations Under the Interstate Commerce Act
49 C.F.R. § 1207	Class I and Class II Common and Contract Motor Carriers of Property
49 C.F.R. § 1249	Reports of Motor Carriers
49 C.F.R. § 1307	Freight Rate Tariff Schedule and Classifications of Motor Carriers
49 C.F.R. § 1310	Freight Rate Tariffs and Classification of Motor Common Carriers
49 C.F.R. § 1311	Tariff Filings for Owner-Operator Food Transportation
49 C.F.R. § 1322	Extension of Credit to Shippers by Motor Carriers
49 C.F.R. § 1325	Extension of Credit to Candidates for Federal Office or Their Representatives
49 C.F.R. § 1330	Filing Quotations for Government Shipments at Reduced Rates
49 C.F.R. § 1331	Section 10706 Applications

PRESENT DOT REGULATIONS PERTAINING TO MOTOR CARRIER OPERATIONS

49 C.F.R. § 386	Rules of Practice for Motor Carrier Safety Proceedings
49 C.F.R. § 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 C.F.R. § 390	Federal Motor Carrier Safety Regulations: General
49 C.F.R. § 391	Qualifications of Drivers
49 C.F.R. § 392	Driving of Motor Vehicles
49 C.F.R. § 393	Parts and Accessories Necessary for Safe Operation
49 C.F.R. § 394	Notification, Reporting and Recording of Accidents
49 C.F.R. § 395	Hours of Service of Drivers
49 C.F.R. § 396	Inspection, Repair and Maintenance
49 C.F.R. § 397	Transportation of Hazardous Materials; Driving and Parking Rules
49 C.F.R. § 399	Employee Safety and Health Standards

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Compile by:
Interstate Carriers Conference

THE WALL STREET JOURNAL, THURSDAY, OCTOBER 6, 1983

Letters to the Editor

ICC Paves Road to Ruin for Truckers

Contrary to Thomas Gale Moore's July 26 editorial-page article, the Motor Carrier Act of 1980 was not passed "over the bitter objections of the trucking industry . . . " The industry supported the act, in order to curb the Interstate Commerce Commission's abusive administrative deregulation. It didn't work. The ICC, thumbing its nose at Congress and the courts, has demonstrated that it is utterly unconcerned with any law other than its own fiat.

For the first time in memory, the ICC has been made subject to writs of mandamus by several federal courts of appeals. Amazingly, the Commission did not comply with these writs!

The act of 1980 did not repeal the act of 1935, but merely modified it. There still exists a pervasive regulatory scheme, called for by statute, under which the industry could operate in a profitable and healthy fashion. Instead, the bottom has dropped out for motor carriers.

Recently, IML Motor Freight (revenue approximately $100 million per year) and Maislin Transport ($200 million) have gone into Chapter 11 proceedings. Other large carriers are on the endangered species list. Owner-operators—the small businessmen of the industry—have decreased from approximately 300,000 during the late 1970s to approximately 100,000 today. A survey which I conducted disclosed that 25% to 50% of the owner-operators who remain will go out of business if the Surface Transportation Assistance Act of 1982 is not modified to change the heavy vehicle use tax. The effect on trucking companies which own and operate their own equipment may be even more severe.

Eased rate regulation, Prof. Moore alleges, has led to pleased shippers. This is not uniformly the case. While very large shippers are busy beating rates down to the lowest possible level, cut-rate, below-cost operations cannot continue without bankruptcy occurring.

This madness continues only because of an ICC that, collectively, refuses to administer the act each commissioner swore to uphold.

What about the allegation that service to small communities "either remains unchanged or has improved after the passage of the Motor Carrier Act," to quote Prof. Moore. The ICC staff says it ain't so. The Commission has been accused of suppressing a study performed by its San Francisco field office, because it disproved the above—one of the Commission's pet premises.

Yes, Prof. Moore, debilitating regulation still remains. It is debilitating because it is improperly implemented. We agree with you that prices aren't fully aligned with costs; in fact, they are well below costs in many, many instances; and still the ICC refuses to act.

The free market can be just as debilitating to transportation as over-regulation. No one necessarily wants to return to the straitjacket of trucking regulation in the era before 1977, but we cannot live with what we've got right now.

Unless the situation changes dramatically for the better, the violence which preceded enactment of the Motor Carrier Act of 1935 may well be upon us again. Although our organization strongly opposed the so-called Owner-Operator Strike earlier this year, pauperization of truckers can only lead to similar problems in the future. Let's get rid of those "free market freaks" that remain at the ICC and get back to responsible regulation.

MARSHALL SIEGEL
Executive Director
Independent Truck
Owner-Operators Assn.
Canton, Mass.

Interstate Carriers Conference

1616 P STREET, N.W. WASHINGTON, D.C. 20036 202-797-5286

STANLEY HAMILTON
Executive Director

October 26, 1983

Honorable Glenn M. Anderson
Chairman
Committee on Surface Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are two recent ludicrous actions by the Interstate Commerce Commission, along with our Conference's response to one, that I respectfully request be included in the printed record of your Subcommittee's hearings on the Oversight of the Motor Carrier Act of 1980 along with my testimony of October 25, 1983.

Sincerely,

Byron Raznick
President
C.O.D.E., Inc.
Denver, Colorado

Enclosures

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Interstate Carriers Conference

1616 P STREET, N.W. WASHINGTON, D.C. 20036 202-797-5286

STANLEY HAMILTON
Executive Director

October 11, 1983

Mr. Gary Waxman
Office of Management and Budget
Room 3001 NEOB
Washington, D.C. 20503

Dear Mr. Waxman:

You may have shared our wonderment at a recent Interstate Commerce Commission submission to your office seeking renewed approval for a small annual reporting form for 400 truck owner-operators alleged to result in 4,000 "burden hours."

We had hardly recovered from that assertion when the Commission issued the attached formal rulemaking proceeding designated as Ex Parte MC-143.

The Commission somberly complains in the notice that the monumental task of mailing and receiving all of a total of 404 of these owner-operator reports once a year "has caused reporting to become burdensome to the Commission."

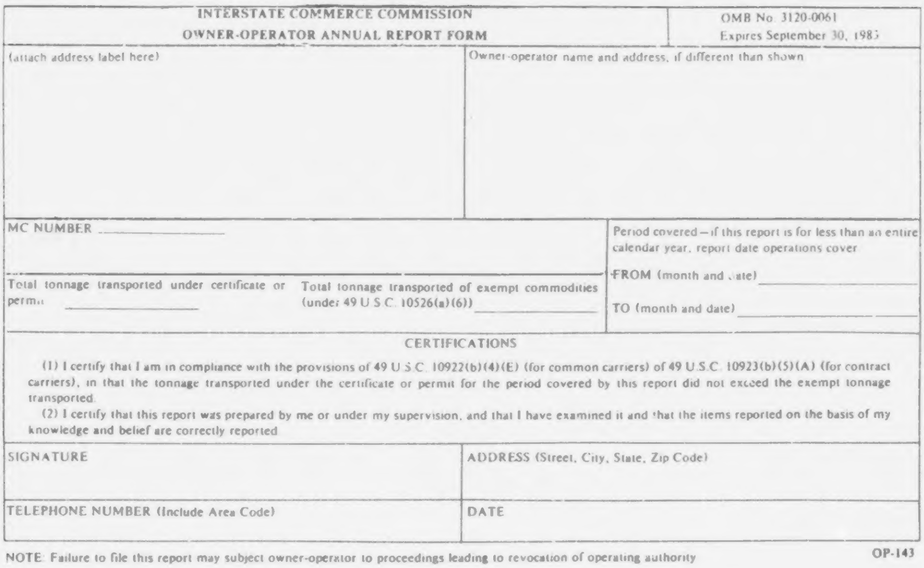
Really, now! Subtracting weekends and holidays, there are some 250 working days a year. Even if the Commission were processing 500 reports a year, that would be an average of only two outgoing and two incoming per day. A backbreaking burden!

Worse, the Commission all but concludes that the reports have no purpose by saying "this information is of no statistical use to the Commission" and that the information "appears to be surplusage." So, the Commission airily proposes to eliminate entirely the two annual tonnage lines (imposed by Congress and the only reason for the report) from this terribly onerous form, saying "this rule change will be of substantial economic benefit to a significant number of small entities."

From the sound of that, an outsider might infer that the report itself is some massive technical document requiring a battery of statisticians and auditors weeks to complete and forcing the Commission staff to spend untold hours laboriously agonizing over a mass of information.

Established in 1983 by merger of the
Common Carrier Conference-Irregular Route and the Contract Carrier Conference

Hardly! the entire form, all 5½ by 8½ inches of it, is reproduced here in full:



INTERSTATE COMMERCE COMMISSION
OWNER-OPERATOR ANNUAL REPORT FORM

OMB No. 3120-0061
Expires September 30, 1983

(attach address label here)

Owner-operator name and address, if different than shown

MC NUMBER ______________

Period covered—if this report is for less than an entire calendar year, report date operations cover

FROM (month and date) ______________

TO (month and date) ______________

Total tonnage transported under certificate or permit ______________

Total tonnage transported of exempt commodities (under 49 U.S.C. 10526(a)(6)) ______________

CERTIFICATIONS

(1) I certify that I am in compliance with the provisions of 49 U.S.C. 10922(b)(4)(E) (for common carriers) of 49 U.S.C. 10923(b)(5)(A) (for contract carriers), in that the tonnage transported under the certificate or permit for the period covered by this report did not exceed the exempt tonnage transported.

(2) I certify that this report was prepared by me or under my supervision, and that I have examined it and that the items reported on the basis of my knowledge and belief are correctly reported.

SIGNATURE

ADDRESS (Street, City, State, Zip Code)

TELEPHONE NUMBER (Include Area Code)

DATE

NOTE: Failure to file this report may subject owner-operator to proceedings leading to revocation of operating authority

OP-143

That is the sum total of the report the Commission laments is so awfully "burdensome" for it to handle. And, by removing the two tonnage lines--plus, presumably, the line showing the period covered--would magically permit "a significant number of small entities" to reap "substantial economic benefit."

Since the Commission seems to feel those postcards put it to such strain, it bemuses us to point out that this Conference or anybody else filing comments on the notice of rulemaking must submit an original and 10 copies to the Commission.

We, for one, do not intend to file, even if the Commission would accept a postcard. It would serve no purpose.

Besides, many of our trucking company members are too busy working on another form the Commission recently asked your office to renew--a form the Commission says requires 2,868 carriers a yearly total of 404,388 "burden hours," or some 141 hours per company.*

Sincerely,

Stanley Hamilton

Attachment

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* Federal Register, October 4, 1983, page 45320.

SERVICE DATE

SEP 28 1983

EC
FR-7035-01

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1164

Ex Parte No. MC-143

OWNER-OPERATOR FOOD TRANSPORTATION

AGENCY: Interstate Commerce Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Commission's decision which implemented the statutory post-licensing conditions governing owner-operator food transportation requires that an annual report form be filed approximately one year after the grant of authority and on the same date in successive years. Due to the large number of owner-operators authorized to participate in this traffic and the variety of grant dates, mailing of forms to owner-operators on the anniversary date has become administratively cumbersome. The Commission proposes to make the system more efficient by requiring all owner-operators to file their reports on the same date annually for transportation conducted during the prior calendar year.

In addition, the current report form requires owner-operators to show the total regulated tonnage transported and the total tonnage of exempt agricultural commodities transported. The law does not specifically require the collection of this data and due to its questionable utility, this requirement appears incompatible with the statutory mandate to streamline and simplify, to the maximum extent practicable, the reporting requirements applicable to owner-operator food transportation. It is, therefore, proposed to eliminate the tonnage reporting requirement from the annual report form.

DATES: Comments must be submitted on or before October 31, 1983.

ADDRESS: Send an original and 10 copies of comments to:

Ex Parte No. MC-143
Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, D.C. 20423

of 49 U.S.C. 11145(c) which directs the Commission to ease the reporting burden on owner-operator food transporters to the maximum extent feasible. For this reason it is proposed that the tonnage reporting requirement be eliminated.

Regulatory Flexibility

This rule will change the form required to be filed by authorized owner-operators (all of whom are presumed to be small entities). It will make the filing date uniform for all owner-operator food transporters and eliminate the burden of reporting exempt and regulated tonnages. The effect of this rule change will be of substantial economic benefit to a significant number of small entities.

This decision is not a major federal action significantly affecting energy consumption or the quality of the human environment.

This action is taken under the authority of 49 U.S.C. 10922(b)(4)(E), 10923(b)(5)(A), 11145(c), and 5 U.S.C. 553.

Decided: September 7, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich
Secretary

(SEAL)

List of subjects in 49 CFR Part 1164:

Motor Carriers, Reporting and Foods, Freight, Recordkeeping requirements

EC

SERVICE DATE

OCT 26 1983

MC/EC 7

INTERSTATE COMMERCE COMMISSION

DECISION ON REMAND

DOCKET NO. MC-121794 (Sub-No. 7),

JAMES WILKETT d/b/a WILKETT TRUCKING COMPANY, EXTENSION-OKLAHOMA AND TEXAS

(Stigler, Oklahoma)

Decided: October 13, 1983

Applicant James Wilkett Trucking Company seeks authority to transport coal and coal products between points in Oklahoma and Texas. In a decision served January 25, 1983, we denied the application on the grounds that the drug and second-degree murder convictions of its owner (James Wilkett) rendered the company unfit to receive a license.

The United States Court of Appeals for the District of Columbia Circuit reversed the decision and remanded the case to the Commission. James Wilkett d/b/a Wilkett Trucking Company v. Interstate Commerce Commission et al., 710 F.2d 861 (D.C. Cir. 1983). The Court found that our determination "that James Wilkett's convictions were indicative of a predisposition on the part of the company to violate trucking statutes and regulations . . . is unreasonable." 710 F.2d at 865. The Court also concluded that James Wilkett's fitness was severable from that of his company. 710 F.2d at 866. Because the sole issue was the applicants' fitness,[1] and the Court found that the Commission erred in its reasoning and conclusion on this issue, it instructed the Commission to issue Wilkett a certificate. The Court also stated [710 F.2d at 869]:

> However, the Commission did not have the opportunity to consider whether the new, expanded operating authority should be unqualified or issued for a limited time period, subject to review. Therefore, the case is remanded to the Commission for the purpose of promptly issuing the authority with such reasonable time limitations as it deems necessary.

---

[1] Whether Wilkett's service will serve a useful public purpose responsive to a public demand or need has never been an issue in this proceeding.

Therefore, we must now address on remand whether to issue Wilkett Trucking a qualified or unqualified certificate.

Even though the Court gave the Commission the option of granting Wilkett a limited-term certificate, the tenor of the Court's decision is that Wilkett's convictions do not create a cloud over his company's fitness. The Court stated that the Commission erred in finding the applicant unfit and instructed the Commission to issue a certificate. Therefore, for all practical purposes, Wilkett had to be considered fit after the Court's decision. Because the Court gave no indication on what grounds only a limited-term certificate could be issued when, as here, the Commission is compelled to find Wilkett fit, we can discern no reason to limit the authority. Moreover, as a practical matter, if the Commission issued Wilkett a limited-term certificate but found Wilkett to be engaged in misconduct during the term, it would not have to wait until the end of the term to take action but could suspend or revoke the certificate either on our own initiative or on a carrier's complaint. 49 U.S.C. 10925. On the other hand, if Wilkett did not engage in misconduct during the term, we would simply renew the authority.

For the above reasons we see no justification for limiting Wilkett's certificate to a specified term.

It is ordered:

The application is granted to the extent set forth in the certificate. The authority is granted without restriction.

The attached certificate will become effective upon the service date of this decision.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor and Commissioner Andre concurred with separate expressions. Commissioner Gradison would have issued a two-year limited term certificate.

AGATHA L. MERGENOVICH
Secretary

(SEAL)

CHAIRMAN TAYLOR, concurring:

I have reluctantly concurred in this decision, but only because we have been specifically directed by the Circuit Court to issue the authority in question.

Mr. Wilkett, who has twice been convicted of serious felonies and who is now serving two 15-year sentences, is seeking to expand his trucking operations. In reversing the Commission's denial of the authority requested, the Court concluded that the fitness of James Wilkett, as an individual, was severable from that of James Wilkett operating as a sole proprietorship, d/b/a Wilkett Trucking Company. Then, based upon this fictional distinction without a difference, the Court went on to hold that the Commission's fitness inquiry should have focused upon James Wilkett's sole proprietorship instead of James Wilkett.

Being a sole proprietorship, Mr. Wilkett has the legal power to control the operations of Wilkett Trucking Company, and as the uncontroverted evidence of record demonstrates, he manages these operations from his place of confinement through daily telephone conversations with his son. More importantly, the actual applicant in this proceeding was James Wilkett, d/b/a Wilkett Trucking Company, and the certificate we have been directed to issue will be in his name. Accordingly, it is obvious that the Court not only relied upon a fictional distinction (i.e., that Mr. Wilkett and his trucking company are separate entities), but to further confuse matters, the Court failed to consider the fitness of the actual applicant.

The Commission's responsibilities, in evaluating the fitness of an applicant, are designed to protect the public from unscrupulous operators. Mr. Wilkett, the applicant in this proceeding, has been convicted of murder and drug trafficking, both of which offenses demonstrate, at least to me, Mr. Wilkett's predilection to disregard the law. Moreover, for the Commission to find Mr. Wilkett fit, despite his conviction for conspiracy to distribute narcotics, hardly seems to be an appropriate stance for a federal government agency, particularly when so many resources of that same government are now committed to the fight against drug trafficking. To think that Congress contemplated such a bizarre result is a conclusion I am unable to draw.

Consequently, I believe the Court's decision was erroneous. However, since the Commission failed to reach a majority on the question of seeking a rehearing, we are obliged to abide by the Court's directive, even though the facts of this case should have mandated the pursuit of further judicial review.

COMMISSIONER ANDRE, concurring:

Although I am relieved that justice has been done in this case, I regret that the Wilkett family has been made to bear the expense of the court appeal and that potential customers have been deprived of the company's services in the interim.

PRIVATE TRUCK COUNCIL of AMERICA, Inc.

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Airco Industrial Gases Murray Hill, NJ

Past President

STATEMENT OF

RICHARD D. HENDERSON

EXECUTIVE VICE PRESIDENT

PRIVATE TRUCK COUNCIL OF AMERICA, INC.

AT

OVERSIGHT HEARINGS ON THE MOTOR CARRIER ACT OF 1980

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION,

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,

UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 25, 1983

My name is Richard D. Henderson and I am Executive Vice President of the Private Truck Council of America (PTCA).

The PTCA is the only independent national organization (not affiliated with the ATA) representing non-transportation companies with respect to the operation of trucks by those companies in the course of their own manufacturing, processing, retailing, or other businesses. Private trucking is acknowledged to be the largest segment of the trucking industry, and the PTCA's approximately 1,800 member companies include Fortune 500 companies and numerous smaller concerns.

Our statement today concerns two issues. First, we believe that deregulation of leasing transactions will serve the nation's interest in efficient interstate truck transportation, and we urge the Congress to support ICC decisions to that end. Second, we believe the Congress should act to limit actions by state governments, which are imposing an increasingly burdensome maze of requirements on interstate truck operators, thwarting national truck productivity.

I. Leasing

We feel that the Interstate Commerce Commission is properly implementing the Motor Carrier Act of 1980 by removing impediments to inefficient truck transportation. In particular, we support the

Commission's actions removing restrictions on efficient leasing transactions and urge this Committee to adopt legislation consistent with a Commission leasing decision which has not yet been implemented due to a stay issued by the U.S. Court of Appeals for the Eleventh Circuit.

Specifically, the ICC, in February, 1982, in Ex Parte No. MC-122 (Sub-No. 2), decided that private carriers could lease equipment and drivers from single-source, unregulated entities, such as owner-operators, on an exempt from ICC regulation basis. Previous to that decision, such lease arrangements had been considered for-hire carriage, which would be illegal without proper authority. Certainly this ICC decision allows private carriers an additional and flexible source of labor and equipment and provides new opportunities for hard-pressed owneroperators. While for-hire trucking interests challenged this ICC decision in the U.S. Court of Appeals for the Eleventh Circuit, we are pleased to report that just two weeks ago the Court affirmed the ICC's decision.

Also in the spirit of the 1980 Motor Carrier Act, the ICC, in Ex Parte No. MC-43 (Sub-No. 12), rendered a decision in November, 1982 which would allow private carriers the opportunity to trip-lease their drivers and equipment to for-hire carriers. Previously, the ICC would not allow such leases for a term of less than thirty days.

The ability of private carriers to trip-lease to for-hire carriers would go a long way towards helping private carriers eliminate their empty backhaul problem -- to an extent at least equal to if not greater than the intercorporate hauling provision specifically provided for in the 1980 Act.

But again, for-hire trucking interests have challenged this needed reform in the U.S. Court of Appeals for the Eleventh Circuit, where the matter has been stayed pending appeal since January, 1983. PTCA has joined the ICC in defending the decision in court. Pending court action, private carriers are denied opportunities to operate more efficiently and economically which would be provided by this decision. If past history is any guide, we cannot count on the court to resolve this matter soon.

Thus, we ask for specific legislative relief on the trip-lease issue, so that private carriers can operate more efficiently and improve productivity in this country. This leasing decision reflects good common sense. It says that a private truck operator may operate efficiently and productively, without red tape, by leasing equipment which is available and underutilized to carriers in need of equipment. We urge the Committee to demonstrate its commitment to this common sense result through enactment of appropriate legislation.

II. State Regulations Burden Interstate Truck Operators

A. Restrictions on Intercorporate Hauling

Next I would like to draw your attention to a pattern developing in some of the States in which compensated intercorporate hauling engaged in by private carriers on an interstate basis is not recognized as exempt private carriage, but as for-hire carriage, for which registration and fee payments are required.

The State of Georgia, for example, treats private carriers engaged in compensated intercorporate hauling as if they were for-hire carriers, requiring them to secure a registration permit from the Georgia Public Service Commission and pay a $25.00 filing fee. Additional annual registrations are required along with renewal fees. More importantly, under Georgia law interstate CIH operations may not commence until the State sends the applied-for permit back to the CIH operator.

We submit that these Georgia registration requirements contravene the compensated intercorporate hauling exemption of Section 9 of the Motor Carrier Act, which authorizes carriers to commence interstate CIH operations upon notifying the ICC (without waiting for any paper to be returned by the ICC). Thus, Georgia is asserting rights to regulate interstate operations which the Congress explicitly denied to the ICC.

We therefore urge that a new subsection be added to 49 U.S.C. §11506 which would explicitly preempt any state from requiring registration with respect to interstate compensated intercorporate hauling operations.

B. State Taxes, Licensing, Registration, and Other Requirements Are Greatly Burdening The Trucking Industry

The final point I would like to make, and I believe it is more important than any other point that will be made to this Committee today, is that the Congress must act promptly in response to the study completed by DOT and the ICC pursuant to Section 19 of the 1980 Motor Carrier Act. That study shows a tremendous need for federal legislation to combat the proliferation of differing state truck taxes, licensing and registration fees, and other requirements. We understand that the Department of Transportation is developing legislation to establish a mechanism and federal regulatory authority to address this pressing problem. A provision in this vein was urged by the Administration and adopted by the Senate as part of its version of the Surface Transportation Assistance Act of 1982 (STAA), but the provision was deleted in Conference, perhaps on the ground that the Section 19 study was not complete. That study is complete now, however, and it establishes such a clear need to reduce the burden of state regulations on interstate truck operators that we support much stronger legislation to achieve uniformity than the Administration urged last year.

Thus, we urge this Committee to promptly begin efforts to address this problem, which is getting worse and worse. Finally, to make clear how important this problem is, I would say that, while you have heard a great deal from all parts of the trucking industry, including the PTCA, of the need to change the astronomical truck tax increases mandated by the STAA, the problems and financial burden caused by differing state truck taxes, registration fees, and other requirements is of equal severity.

Thus, the PTCA looks forward to working with this Committee to improve truck productivity by developing legislation to eliminate the burden caused by the crazy quilt pattern of state laws and regulations which impede interstate trucking operations.

That concludes my prepared statement, Mr. Chairman. We thank you for the opportunity to appear today and, at this time, I would be pleased to respond to any questions the Committee may have.

* * * * *

Mr. **Anderson**. Please proceed.

TESTIMONY OF GEORGE L. EDWARDS, VICE PRESIDENT OF DISTRIBUTION AND TRANSPORTATION, DIVERSIFIED PRODUCTS CORP., OPELIKA, ALA., REPRESENTING PRIVATE CARRIER CONFERENCE, INC.; BYRON RAZNICK, PRESIDENT, CODE, INC., DENVER, COLO., REPRESENTING INTERSTATE CARRIERS CONFERENCE; RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL, AND GRANT M. DAVIS, OREN HARRIS, PROFESSOR OF TRANSPORTATION, UNIVERSITY OF ARKANSAS

Mr. **Edwards**. My name is George L. Edwards. I am an officer in the Private Carrier Conference, and I am also vice president of distribution and transportation of Diversified Products Corp., in Opelika, Ala.

What I would like to do, sir, instead of reading the entire statement, is just to have it made a part of the record and highlight.

Mr. **Anderson**. It is a part of the record. All four of these are a part of the record now, and obviously, we are all hungry, so do not go too long. I will shorten my questions, too, if I can.

Mr. **Edwards**. The Private Carrier Conference is associated with the American Trucking Associations, and we represent approximately 4,500 members.

We would like to make the point this morning that we commend the Congress on passage of the Motor Carrier Act of 1980. We are essentially pleased with the impact this act has had on private carriers and also we are pleased with the decisions that the Interstate Commerce Commission has rendered as a result of this.

I think, as we note, most of these decisions have been reinforced by the courts of this land.

The Private Carrier Conference has been endeavoring to obtain the extent that private carriers have taken advantage of the options that they have in the Motor Carrier Act of 1980. We commissioned a study to be done by the Wharton School, the University of Pennsylvania, and in the interest of time, I am not going to cite a lot of figures, but I would just state that we are willing to make that study a part of the record if you so desire.

The only real problem that we have confronting private carriers, we would like to make known to you today, is that of State regulations. This is particularly true in the instance where you have a private fleet that operates as an interstate as well as an intrastate carrier. As an example, in the performance of compensated, intercorporate hauling, many States still look upon this as being regular, for-hire carriage, and so to be an intrastate carrier, you have to obtain operating authority from that State. And many times, it is administered differently than at the Federal level, and it causes problems.

I think this would conclude my remarks, and I will be happy to answer any questions that you or the other gentlemen on the subcommittee might have.

Mr. **Anderson**. We will hold the questions until after we complete the whole panel.

Mr. ANDERSON. We are about to have a vote, but maybe, Mr. Raznick, you can make your presentation, and then we will come back and ask questions at that time.

Mr. RAZNICK. Thank you, Mr. Chairman.

Mr. ANDERSON. And of course, your full statement, as you prepared it, is in the record.

Mr. RAZNICK. Thank you.

Mr. Chairman and members of the committee, I am Byron Raznick, president of C.O.D.E., Inc., a motor common carrier based in Denver, Colo., and I appear today on behalf of the Interstate Carriers Conference, which is an affiliate of the American Trucking Association.

I would like simply to elaborate briefly on a couple of points that are clearly spelled out in my statement which was submitted for the record.

I think that our conference, my company, noticed problems with reference to the manner in which the Interstate Commerce Commission has decided to implement its mandate as presented by the Congress in the Motor Carrier Act of 1980. Major areas of problems, as we see them, are safety, the issue of rail favoritism, the matter of disobedience to the law as we understand it, the matter of disobedience to court orders as they have been set forth and, of course, as previously mentioned, the issue of onerous State taxation and regulation.

The issue of public safety is of great concern to us. We find ourselves in a circumstance where, despite the severe recession of 1980–82, the Commission has granted a sufficient number of additional authorities, but there are 40 percent more carriers on the Nation's highways today. While doing this, the Commission has apparently abandoned any semblance of concern about safety. They only require any longer a bare statement of familiarity with the law in the applicant's statement accompanying a request for operating authority.

There is no prior expression of satisfactory standing with the Department of Transportation. None is requested, expected, or required. Additionally, the Commission has recently promulgated orders that would eliminate the requirement of a 30-day lease as required in 1951, when the Commission commenced regulating leasing practices.

The only specifically stated rationale at any point for the requirement of a 30-day lease is the issue of safety—concern for safety of operations. And the Commission, in its current decision, indicates that it no longer has any concern with that, that if there is any concern, it should be that of the DOT. I think the Commission is mistaken, both with respect to its analysis and to the effect of the legislation involved. The Commission, under statute, is charged with the responsibility for safety, and the Congress in enacting both the 1925 and 1980 Motor Carrier Act, established a transportation policy that requires the Commission to promote safe transportation and to improve and maintain a sound, safe, and competitive privately owned motor carrier system.

So the Commission is in a posture presently of increasing substantially the number of authorized carriers on the highway, reducing the lease period so as to remove virtually any opportunity for regulated carriers who employ leased operators to insure proper qualification and equipment compliance.

I want to point a finger at the Department of Transportation and say it is their responsibility when, in fact, even the Department of Transportation has not been sufficiently concerned with motor carrier viability to request authorization from Congress for a Federal Motor Carrier Administrator as a parallel to the Federal Railroad Administrator.

ICC has conducted several proceedings resulting in acts of blatant favoritism to rail transportation, to the detriment of motor carrier transportation. They have exempted from rail regulation the transportation of trailers and containers on flatcar by rail carrier. They have further exempted from economic regulation of transportation, or propose to, the economic regulation of any commodity moving by rail carrier when such transportation service is provided in boxcars. In an additional decision, the Commission proposes to award a similar exemption to all rail transportation of frozen foods. In both instance, transportation of similar commodities by motor carriers are fully regulated.

Not only has the Commission favored actual rail transportation with substantial competitives advantages. It has additionally, by a series of decisions, allowed rail carriers to compete directly with independent motor carriers either through railroad subsidiaries or by awarding rail carriers themselves motor carrier operating authority.

The Wall Street Journal, on October 20, Mr. Chairman, in a frontpage article, quotes Mr. Lawrence Senna, the head of the Atcheson-Topeka-Santa Fe Railway as saying, "We are the big winners of deregulation." The Atcheson-Topeka-Santa Fe is a unit of the Santa Fe Industries which is to merge by yearend with Southern Pacific Corp. to form the Nation's third-largest railroad—and incidentally, Southern Pacific by itself is the largest private landowner in California. Both of those companies presently operate substantial motor carrier operation, and the two of them collectively, in motor carrier operation alone, reported revenues in excess of $100 million. That is not the historical definition of small business.

Not content simply with encouraging the vertical integration that the Commission has in other respects, in August of this year, the Commission further removed limitations on any acquisition of motor carriers by rail carriers. On September 19, the Commission approved the acquisition by Burlington Northern Railroad of Federal Transport, Inc., a nonoperating motor carrier, that held as its sole asset nonradial, nationwide authority for transporting general commodities. BN said that they wanted to establish a carrier independent of Burlington Northern which would not be subject to "shipper confusion"—whatever that means. At the same time, incidentally, Burlington Northern has a rail operation, previously existent, which reported $68 million worth of revenue in 1981.

By discriminating against the independent motor carriers in forms of regulation and by encouraging vertical integration to types and degrees not contemplated by Congress, and by refusing to take a competitive balancing action which was mandated by the law, the Commission has clearly jeopardized the existing motor carrier industry. In the case of my company, it has resulted in a loss of 40 percent of the independent owner/operators who represented the backbone of my company. These are people who have not been able to continue under the competitive pressures, have not been able to continue performing maintenance on their equipment and/or replace equipment at the existing rate levels. They have simply thrown up their hands and gone out of business. If Congress believes in the free enterprise system, it would seem to me that some attention needs to be addressed to the small businessman, who is exemplified by the owner/operator and by operators of small companies such as myself.

Mr. **Anderson**. Mr. Raznick, I am going to have to go vote.

We will break now until 2 o'clock, and at that point, we will pick up with you and complete the panel.

[Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

Mr. **Anderson**. The subcommittee will come to order.

When we recessed Mr. Raznick, you hadn't quite completed your presentation. You may continue now.

Mr. **Raznick**. Thank you, Mr. Chairman.

Part of the significance of 1981, unfortunately, is that in 1981, a carrier by the name of Michigan-Nebraska, which did 15 million dollars worth of business, had as president my predecessor as spokesman for the conference, Mr. William Harris.

And, unfortunately, as a result of the impact of deregulation, Mr. Harris' business is no longer in existence; and Mr. Harris is not here to represent us.

Proceeding to the next point I made in my earlier statement to the committee, with reference to the Commission's refusal to obey and implement decisions of the U.S. courts, one of the first regulations that the Commission introduced under the aegis of the Motor Carrier Act of 1980 was a requirement that all carrier's conforming requests for authority must meet certain rigid parameters set forth by the Commission as to commodity, classification and territorial scope.

Certain parties appealed that decision to Federal court, and in 1981, the Fifth Circuit, U.S. Court of Appeals, held that the Commission had to revise certain policies contained in Ex parte 55.

Among the instructions by the court was the prohibition from requiring carriers to accept operating authority of broadened scope or for the transportation of commodities for which the applicant neither had requested nor deemed itself qualified.

The petitioners in that court decision were required to return to the court of appeals for issuance of a writ of mandamus because the Commission refused to implement the court's decision or to follow its dictates.

And nearly 2 years subsequent to the fifth circuit's reversal of Commission policy, the Commission, in August 1983, issued a notice of proposed rulemaking purporting to comply with the court's order.

Now, the Chairman of the Commission, however, noted that the decision was directly contrary to the court's instructions and he authored a dissent.

It is rather interesting to note that a Federal agency can take 2 years during which time it proposes to absolutely ignore—flagrantly ignore—a decision of a circuit court of appeals.

I just wonder how long I, as an independent businessman, would last if I chose to ignore the laws of this land for 2 years or more?

The point to be made in this discussion is that it does not appear that the Federal courts are any longer a viable avenue for relief or recourse in order to insure the proper implementation and interpretation or enforcement of the Motor Carrier Act of 1980 in line with congressional intent.

It appears that only direct congressional action will result in the proper discharge by the Interstate Commerce Commission of its obligation under the statute to insure preservation of a safe, efficient, profitable motor carrier system capable of meeting its obligation for safe, economic, and sound operation for the common economic good and for national defense.

In closing, Mr. Chairman, I would like to touch briefly on the issue of State taxation and regulation:

Section 19 of the Motor Carrier Act of 1980, there Congress found that there are confusing and nonuniform, unnecessarily duplicative, and burdensome provisions required by the various States in terms of licensing.

Since those findings by the Congress, the reporting and taxation burdens imposed on interstate trucking by the individual States have increased substantially.

Further, with piggyback accounting for a 20-percent increase in traffic so far this year, as compared with 1982, thereby further diverting traffic from motor carriers by highway, there are increasingly fewer trucks available to provide the funds that are necessary for highway maintenance and construction through the payment of highway user taxes.

I think that the ultimate impact on "Mr. Average Motorist" is rather clear: Costs are going to be going up; the availability of funds to pay for those highways is going to be, at best, questionable.

I cannot at this point state with certainty what our eventual recommendations to you will be. But there does seem to be emerging a recognition that relief can come only if Congress prescribes, No. 1, a single Federal license plate for each truck operating in interstate commerce; and No. 2, the preemption of some or all State taxing authority over interstate carriers to be handled by a Federal agency that would appropriately reimburse the States involved.

We would welcome the opportunity to work with the committee and staff and develop appropriate legislative relief.

And I want to thank you once again for giving us the opportunity to appear here today.

Mr. **Anderson**. Thank you, Mr. Reznick.

We will hold the questions until we get through with all four of you.

Next, then, I presume, is Richard Henderson, the executive vice president of Private Truck Council.

And we do have your prepared statement and it has been made a part of the record.

Mr. **HENDERSON**. Thank you, Mr. Chairman.

The Private Truck Council is an independent national organization, not affiliated with the ATA, representing nontransportation companies with respect to the operation of trucks by those companies in the course of their own manufacturing, processing, retailing, or other business.

Our statement today really concerns two issues:

First, we believe that the deregulation of leasing transactions will serve the Nation's interest in efficient interstate truck transportation; and we urge the Congress to support the ICC decisions to that end.

Second, we believe the Congress should act to limit actions by State governments, which are imposing an increasingly burdensome maze of requirements on interstate truck operators and impeding national truck productivity.

Speaking briefly to the leasing issues, it is interesting to note that the decisions of the Interstate Commerce Commission—one very major important decision, single-source leasing—has been just very recently reinforced by the courts in Ex parte No. MC-122.

We felt when that decision was issued by the Commission that it was indeed acting in the spirit of the Motor Carrier Act and, although it was submitted to a court test, we are pleased that the 11th circuit court affirmed that decision.

However, there is one other very important leasing decision that has also been challenged, the decision made by the Interstate Commerce Commission, MC-43, sub. 12, involving trip leasing; which would allow private carriers the opportunity to trip lease their equipment and drivers to for-hire carriers.

That has been pending in the 11th Circuit Court now for almost a year.

We, of course, are hopeful that the decision will be favorable on that. But, as yet, it has not been made. And in the meantime our people as well as willing for-hire carriers are stayed, denied, the opportunity to participate in that pending the outcome of the court decision.

So while we have much to be pleased about, we still have a very significant part of our relief, we feel, that is still outstanding.

And I might also add: These challenges in the courts were made by certain for-hire interests; and we are hopeful that finally those challenges will cease and that we can get on with the productivity and the operations that we feel we deserve under the Motor Carrier Act.

Let me next touch on an issue which Mr. Edwards pointed out, with respect to where the Federal regulations are lifted, such as with intercorporate hauling and other sections of the Motor Carrier Act.

If there is not a form of preemption, something written into the law to prevent the States from undoing some of the benefits that are provided in the national legislation, we think that, again, we are going to be denied the real productivity we want.

And the example Mr. Edwards gave and which I would also like to reiterate has to do with intercorporate hauling. In the State of

Georgia, for example, they refuse really to abide by section 9 of the act; they consider it for-hire carriage and they require registration and payment of a fee.

And I think that as more and more of the deregulatory aspects of the Motor Carrier Act and actions of the Commission along those lines are taken, that ultimately I would submit that this committee and the Congress are going to have to deal with, admittedly a difficult subject; but I think that unless there is some provision in the Act that would prevent the States from stepping in, it's not only that the States are going to step in, but in each case, they are going to step in differently in the area of economic regulation.

We already have problems with the States, as I will touch on in a minute, with respect to registration fees and gas taxes. But I think we have yet to see what the problem might be in the area of economic regulation if we don't look at that, the matter of preempting them from doing so, at least where there was a Federal regulation that has been lifted, we submit there should be a provision that would outlaw the States from stepping in.

And, finally, and I think really the most important issue I would like to emphasize today—not that all of the other issues are not important—but the Congress, we submit, must act promptly in response to the study now completed by the Department of Transportation and the ICC pursuant to section 19.

That study shows a tremendous need for Federal legislation to combat the proliferation of different State truck taxes, licensing, and registration fees and other requirements.

We understand that the Department of Transportation is developing legislation to establish a mechanism and a Federal regulatory authority to address this problem. A provision in this vein was urged by the administration and adopted by the Senate, as a part of its version of the Surface Transportation Act of 1982; but the provision was deleted in conference, perhaps on the basis at that time that the section 19 study was not then complete.

The study is now finished and it establishes such a clear need to reduce the burden of State regulations on interstate truck operators, that we support much stronger legislation than even that amendment.

Thus, we would urge this committee to promptly begin efforts to address the problem.

And, finally, I would like to make the point that I am sure all of you have heard a great deal from all parts of the trucking industry, including the Private Truck Council, on the need to change the astronomical truck tax increases mandated by the STAA.

The problems and the financial burden caused by the already-existing, differing, State truck taxes, fees, and all other requirements, is of equal if not greater severity.

So we look forward to working with this committee to improve the productivity of trucking, and, hopefully, to eliminate the crazy-quilt-pattern of all these various State requirements.

I would really like to impress upon this committee the need to do something about that.

And that concludes the main points that I would like to make today, Mr. Chairman.

Mr. ANDERSON. Thank you very much, Mr. Henderson.

And I suppose you are aware, we do have another vote. I do have to go vote, but I'll be back and will try to be back in 10 or 15 minutes—no longer.

So we will stand in recess and then pick up Mr. Davis, and, then, hopefully, get to your questions before another vote comes up.

[Recess.]

Mr. ANDERSON. The meeting of the subcommittee will come to order.

When we recessed, we had just completed with Mr. Henderson; and at this time, Mr. Grant M. Davis, Harris Professor of Transportation at the University of Arkansas.

Mr. Davis, we do have your prepared statement as well as your summary; and your full statement has been made a part of the record, so you can take your summary or you can "summarize" the summary.

Mr. SHUSTER. Mr. Chairman.

Mr. ANDERSON. Mr. Shuster.

Mr. SHUSTER. Before he begins, I would just like to say that Congressman Hammerschmidt asked me to express his welcome; he is sorry that he is not here. He hopes to be here.

He had a meeting with the head of the Veterans' Administration, apparently. And he spoke so very highly of you, and I know he will get here if he can.

Mr. DAVIS. Thank you, sir.

Mr. ANDERSON. Mr. Davis.

Mr. DAVIS. Mr. Anderson, I certainly appreciate being invited here today. In all candor, I'll have to tell you that our panel has had a long discussion and we think we're entitled to "tenure" at these particular seats. [Laughter.]

Mr. ANDERSON. That might not be too good. [Laughter.]

Mr. DAVIS. As professor of transportation I have an interest in all the facets of our transportation industries, and what I do at our university, is direct the Center for Transportation Research where we try to tentatively evaluate the impact of some of the major bills that are passed by the Congress; we try to monitor important legislation; and try to inform the various industries and citizens in our State and area that subscribe to our publications from the university about these transportation activities.

The Motor Carrier Act of 1980 and its administration is of extreme interest to me, both as a student of transportation and as a professor. As I understood the Motor Carrier Act of 1980, it was supposed to be a regulatory reform act rather than a deregulation act, per se.

I did provide some insight in the form of a statement to the committee in the debate leading up to that act; and it was my impression that there was supposed to be an attempt to balance the public need for transportation service with entry; we were going to try to attain rate flexibility at the same time that we encouraged innovative pricing; and we were trying to make the industry, per se, more responsive to changes in consumer needs.

I didn't have any basic quarrel with the act. I thought parts of it would be rather difficult to implement, other parts would not be so difficult to implement; and so truthfully I can say I don't think I was vehemently opposed to the Motor Carrier Act of 1980.

As I was preparing for this committee and I was trying to think of what the major impact—as an observer of this industry, what I think the major impacts have been. And I would like to really address three areas:

The first of these is market entry; the second is in the rate area; and the third is in the human area.

From what I have been able to understand from reading the Motor Carrier Act and the various publications associated with the industry, and publications by the Interstate Commerce Commission, there's been a tremendous number of new carriers into this market.

I have been able to glean from these various publications that most of these carriers are in what we call the truckload special commodities market.

I have a concern with the industry, particularly that part of the industry that we call the LTL general commodity carrier section of the industry, because, in my professional opinion, I think that is truly the only public utility type of industry within trucking that we have.

I see this as an industry that does have some fairly substantial barriers to entry. I think it was pointed out this morning that there has only been one new carrier enter this market. And as I point out in my statement, if the economic function of profit is to attract resources to an industry that should expand, we know what the economic function of loss is, and that's to take resources away from an industry—but what we are beginning to see in the LTL general commodity sector of the industry that bothers me is concentration.

I have been an observer of economic concentration in this industry for some time. A lot of our transportation industries are highly concentrated: the railroad industry, the airline industry, and the motor carrier industry. But I see this concentration movement intensifying. And that bothers me as a student of public policy.

I am not saying that "big is bad" but at the same time it is an industry that we have been led to believe is extremely competitive, and yet we see these increasing market shares.

But we do have a tremendous number of bankruptcies in the LTL general commodity carriers, and I think there's been mention of 232 carriers that have departed this particular industry.

So I guess that if you are trying to evaluate the effect of an entry policy, you have, on the one hand, an expanding part of the industry and, on the other hand, you have a declining part of the industry—the one that has traditionally affected most of the shipping public or large segments of the small shipping public that is developing an inordinate amount of concentration.

Of course, all of this is interrelated: when we start talking about concentration, market, entry, rates, people, it's very complex. And it is interrelated.

But the rate area is one that I have an interest in, as well; and I do see an impact in the rate area.

I have read the Interstate Commerce Commission's call for revenue adequacy. I read a report they issued this summer stating that the shipping public has benefited from rates, and there has been more efficiency in the industry. And I have difficulty reconciling this efficiency with the numbers that Dr. Silberman presented before this subcommittee this morning.

The rate discrimination aspect of pricing in the industry is one that I think we've all read about. I've tried to think of its impact on people at the retail level, the wholesale level; and one of the things that I am in the process of doing now—and I really would like to find out this information—is: What is the competitive balance in final product markets where we have different companies? There are some, say, for example, that receive discounts; some that don't. What does this do to their sales-cost ratio?

I think this could even distort the impact of discount rates even more than we have been led to believe.

I know that the Interstate Commerce Commission is considering reducing or eliminating the antitrust immunity for LTL shipments. In my professional opinion, I don't think this will necessarily help; because Dr. Silberman presented data before this committee this morning concerning the bind that the industry is in insofar as LTL rates are increasing dramatically.

I don't really think that is the problem. I think that the other problem we should be concerned with here in the Congress is the growth of the large shipper.

We have capacity problems. I have no doubt but that we have a lot of excess capacity in this industry. And as I stated in my statement, a tremendous amount of this excess capacity will soon be eliminated.

In my professional opinion, I think it is going to put a tremendous amount of upward pressure on everybody's freight rates.

And what we have today, though, is a tremendous amount of discounting that is benefiting certain shippers and we do not truly know what the impact of those discounts are at the market level.

I think I would be remiss if I didn't talk about the human element involved in restructuring this industry or these industries.

I have examined the layoff figures. I have read reports in the newspapers, the trade magazines, about the human cost to this industry.

This disturbs me, because when you stop and think of the people who are involved in the industry, when you stop and think that the policy preamble to the 1980 act was to provide fair working conditions, I have difficulty with that when I see we have 100,000 people on layoff or extended layoff or unemployed.

I think the people aspect of this is very important.

It is extremely important and it should not be downplayed.

I truly don't know where this ends, but when you stop and think of the magnitude that each unemployed worker represents with maybe a family size of four or five, I think you can get some feeling for the size of that particular problem.

And I realize all of that is extremely complicated, and it is all interrelated with rates, it is interrelated with market entry, the restructuring of the industry is falling out unevently, in my opinion.

And in closing I would just like to state that this is an industry in transition. It is an industry that I think is going to have a tremendous amount of trouble attracting capital; our infrastructure is wearing out—as each of you knows—our transportation system is at one time and probably still is the most efficient one in the world; there's no question about that.

But I think we all want the same thing. As one of your members stated this morning, we are all interested in having the finest transportation system known to man, but how do we achieve it? This is where we differ.

I think what we need is policy direction from this Congress. I think that we need leadership to examine these laws that were passed, see how they are administered.

And, quite frankly, as I read the 1980 act, and I look at the impact in rates, entry and the human costs, it is very difficult to say that this act has been highly successful.

Thank you, sir.

Mr. ANDERSON. Thank you, Mr. Davis.

Mr. Edwards, you congratulate the ICC for its actions. But the regulated carriers are regaling the ICC's administration of the law.

In your opinion, would the regulated sector be better off with existing regulatory laws being decreased or eliminated?

Mr. EDWARDS. I am going to give you a humble old country boy's opinion.

I think that companies that manage well and manage their companies well, have done the things that they need to do with labor, their workforce, can be successful in any environment.

I believe that regulated carriers can be successful in a more regulatory reformed environment, just as they could in a totally deregulated environment.

I believe that, Mr. Chairman, because our company, the parent company, the Products Co., has in fact grown and prospered in these times; because we took a very hard stance: We cut the costs of our operation. We never laid off a person. But we cut the costs down. We increased our R&D effort. We brought on to the markets some very exciting new products.

And we face more competition now, both foreign and domestic, than we have ever faced.

And I think it gets down to management of the company.

And in our trucking operations in 1982 we actually had less revenue than we did before, but we increased our profit margins.

We have, in fact, standardized our work force with drivers; we have attracted capital; and we have purchased new equipment.

And I believe that a trucking operation as well as any other business can be managed in such a way that it will, in fact, not only survive, but prosper.

Why should trucking be any different than any other part of the American industries?

We don't manage our resources, and then we don't survive.

And I believe to be successful in the trucking industry in the decade of the eighties is going to require all trucking managers to be more innovative, creative, and more marketing oriented in tailoring their services to those that are demanded by the shipping public.

Mr. ANDERSON. I got from your remarks that you were kind of praising the ICC and applauding deregulation, and even urging more deregulation; that is why I kind of pointed the question toward you.

Do you favor more deregulation at this time?

Mr. EDWARDS. I think as private carriers in that sense we have achieved everything that we set out to. I do not see where any further deregulation would benefit our industry.

The problem that we are going to face is, again, as Mr. Henderson pointed out, and I pointed out earlier, we need some homogeneous regulations with respect to the different States in which we operate.

Mr. ANDERSON. Mr. Raznick, in your opinion are the regulatory policies of the ICC or the reporting and taxing policies of the individual States creating the worst problems for your segment of the industry?

And would you kind of explain it?

Mr. RAZNICK. Well, the proliferation of State taxes and regulation, while it is getting to be particularly burdensome, happens to be an issue that with in excess of 30 years experience in this business causes me to be a little bit more used-to.

I don't like it. But I've learned to live with it. We've had it over a number of years.

The question now is of degree.

On the other hand, the approach that the Commission has taken in departing from what we view as the mandated policy they are supposed to follow—and, of course, as they are instructed by Congress to follow—is particularly difficult.

It has resulted in all sorts of things which we cannot address.

As an example, if State A happens to raise their fuel tax 2 or 3 or 4 cents a gallon, I don't like it; it is an additional cost; but it is a cost on top of a function that is already taking place. It is not necessarily a new reporting function. It is strictly a function of the cost factor; specifically, it raises my costs. And I have to either find a way to absorb that or pass it on.

On the other hand, the Commission's approach with reference to the various issues of reregulation or deregulation—depending on one's viewpoint—has caused me concerns in areas where I really have no way to counteract the activity.

For instance, a large shipper or manufacturer who elects, appropriately enough, to become a private carrier, handle his own traffic—there's nothing wrong with that. It is appropriate.

He is integrating the operation and if he can find a way to simplify his operation and to make it more efficient, save money and transportation, create a service factor with reference to his customers that common carriers or contract carriers cannot provide—there is nothing wrong with that.

However, his trucks have to come back home. And now he begins soliciting other jobs.

If it is in the nature of intercorporate traffic, there is no problem with that, either.

But when he becomes a common carrier and, in effect, draws from the market in both directions that I once had—and he is guaranteed traffic in one direction—there is no way in the world I can counteract that.

I can put all the capital I can beg, borrow or steal in that business. I can be the greatest manager in the world. I can cut all the costs there are to cut. I can apply all the expertise that I think I and my staff have, and all that is available to me from within the industry.

And the fact remains that I don't have any captive traffic: I have to compete for every pound of freight inbound and outbound.

In addition to that, by the nature of my business, I have to compete for the availability of equipment.

My operation is entirely with owner-operators. And as I indicated on the record earlier, we are having a terrible time, not only in terms of our own operation—which has lost about 40 percent of our volume—but with reference to owner-operators who are finding it increasingly difficult to maintain their equipment, keep making their payments, stay in operation, maintain the equipment in a safe manner, continue paying the taxes that are a burden on the owner and operator, and still stay in business.

And many of those people who have been small businessmen for years and years and years, are finding it particularly difficult to consider the issue of replacing the equipment that is now being outmoded.

Many of them have lived for 2 or 3 years on whatever equity was available in the equipment, and have been stalling buying new equipment; they could not afford the equipment; they couldn't afford the interest; they couldn't afford the expenses of operating it.

And many of them are just giving up the ghost. As I indicated to you, we have lost about 40 percent of our operators in the last couple of years, not because of any apparent dissatisfaction—I am not talking about somebody that moves from my place to go sign a contract with another utilizer of owner-operator leased equipment.

I am talking about people who have just decided it isn't worth it for what is involved, for the effort, the investment—"I can do better elsewhere."

That is the problem we face. And there is nothing that the State regulation has to do with that. That is a question of implementation of new policy through the Commission.

Mr. ANDERSON. Mr. Henderson, you state that the section 19 study establishes such a clear need to reduce the burden of State regulations on interstate truck operators that we support much stronger legislation to achieve uniformity than the administration urged last year.

Could you give the subcommittee some examples of State laws that are imposing burdens on the interstate carrier?

Mr. HENDERSON. Yes, sir.

There are many of them, Mr. Chairman. One example that comes to mind is one that private truck council has taken the State to court on. But let me give you a brief explanation of it if I may.

It has to do with the State of Indiana. It is called the indefinite situs property tax.

And in summary it taxes trucks that are not domiciled in the State, but who use the State highways.

It taxes those trucks at a different rate and on a different basis than it would tax the trucks belonging to the carriers domiciled within the State.

In other words, it clearly discriminates, in our view, anyway, against the trucks who have to use the State for business within the State, but also are interstate.

Now, we took the State of Indiana to court and challenged that on constitutional grounds; and won the case. Although the State has appealled it.

But that is the type of tax.

Pennsylvania has recently adopted an inspection plan. They don't recognize or grant reciprocity, at least to any degree that I am aware of to other States or some other States who have similar inspection plans.

In other words, it is becoming a very difficult thing for interstate carriers to comply with.

The State of Maine, in retaliation for that—I believe I would have to check the specific tax that they are now imposing on Pennsylvania carriers—but this is the kind of checker-board war, if you will, that goes on among the States; because there is no uniform reciprocity.

There are ton-mile-taxes being adopted, which, of course, both the for-hire and private carriers oppose vehemently. The State of Kentucky I believe has one pending or has just passed one; Arkansas; and so on.

They are all taxing the trucks on different bases, and the administrative burden in many respects to comply with the taxes is more costly or as costly, if you will, sometimes than the actual fee or registration fee itself.

Some companies have whole departments just to keep tabs on the varying taxes.

So it is a severe problem. In the bill last year, I believe the administration, or at least the Senate version, had the Secretary appointing a commission of State revenue officers who would be charged with coming up with recommendations within, I believe 18 months, to make to the Secretary, upon which, hopefully, the Secretary would go to rulemaking.

Now, we have no quarrel with that. But that strikes me as being another "study-step" and I am not sure we really need any more commissions to study.

I really do think the evidence is there, and the data is there; and I respectfully submit that it is up to this committee and the Congress to act to establish at least uniform methods of collecting the tax.

I don't know that you can interfere with the State's right to tax. But it seems to me that there is room for some "preemption" in the method and in the manner those taxes are collected.

Mr. ANDERSON. Do not most of these States have reciprocity commissions to try to work this out?

I know that in my case I was before coming to Congress, I was for 8 years chairman of the Reciprocity Commission in California; and my job was to try to work-out arrangements with every State so that our truckers would get a fair break in their State, and vice-versa. And we had individual compacts and individual agreements all over the country.

Do not most of the States operate this same way in all kinds of taxes?

Mr. HENDERSON. No.

In some areas there is what is called, I believe, the uniform prorate plan; and some 30 or 33 States—I might be slightly wrong on that; I'd have to check, and I can—have adopted that.

But that only covers one small area.

In answer to your question, Mr. Chairman, I think up until recently, up until the last couple of years, we were all hopeful that that would be the approach, the compact reciprocity approach, would be the solution.

But it has not in the last couple of years—just because of the financial pressures upon the States; and, frankly, the fact that trucks have become the "target" if you will for the sitting targets, for increased taxation as States look at means to fill their empty coffers to repair highways or whatever. It has just gotten out of control.

And while it has been around for 30 years, as the previous witness testified, it has intensified in the last year and a half or 2 years almost beyond belief.

And really, as much as I would like to think and I am sure you and the committee would, that the voluntary compact approach would work, I just am afraid it is not; I think there has got to be some Federal stick or carrot there, as you have used in some of your other legislation, ultimately requiring the States to fall into line.

Mr. ANDERSON. Mr. Davis, on pages 10 and 22 of your statement, you discuss cross-subsidizations; specifically at page 22 you state:

> What in effect is taking place today in markets is large shippers being subsidized by small shippers. Cross subsidies abound in transportation but appear acute among small shipment. Negating rate regulation for small "shipments is not a solution in the long-run to cross subsidy problems."

Now, first you say, cross-subsidies abound?

Mr. DAVIS. Yes, sir.

Mr. ANDERSON. Can you give us some examples of where they occur?

And have the incidents of cross-subsidization increased or decreased since the passage of the Motor Carrier Act of 1980?

Mr. DAVIS. Well, I'll try to answer that as best I can, Congressman Anderson; because one of the principal problems that we have found in transportation, per se, happens to be the cross-subsidy problem.

When we had our common carrier system we used a lot of average costing; we strongly suspected some freight rates paid in excess of the fully distributed cost, some paid less.

What we seem to be examining today is with the emphasis upon truckload traffic, the diversion of traffic from the LTL General Commodity carriers that require the balance, you could almost make the statement that to the extent that you have rates driven to the cost level or beneath cost on truckload shipments then the smaller shipper who has been faced with some fairly substantial rate increases, to the extent that this service is offered on demand, that that would constitute cross-subsidy.

The actual magnitude I don't think has been accurately measured. I think it is almost impossible. But that was the reason for that statement.

Mr. ANDERSON. Do you believe that cross-subsidization should be disallowed?

And please explain your answer.

Mr. DAVIS. I think it would be very difficult to totally eliminate cross-subsidies in transportation. The nature of the system itself going from point A creates the capacity to return to that point.

So I think that you are going to always have a certain amount of cross-subsidy.

We argued that point considerably, and it has been argued in the academic literature, as to the exact magnitude.

Now, a lot of people would not have problems with a cross-subsidy if its purpose, for example, was for some social policy. And this is one of the things in the common carrier responsibility, the duty to serve, to bear, the duty to charge reasonable rates, et cetera, that the cross-subsidy problem many people felt was borne by the "high-valued" commodities moved.

But at the same time you can take that argument and state: "If these people create a demand for capacity perhaps their rates would be even higher."

So the actual magnitude is really impossible to measure. But to the extent that you do have this lack of mixture of freight with the pressure being on the truckload movements downward and the pressure upward on the LTL movements if there is a cross-subsidy, then you would almost have to conclude logically that it would be on the smaller shipments.

But the exact magnitude is impossible to measure, sir.

Mr. ANDERSON. What do you believe needs to be done to correct the current situation that exists in the motor carrier industry?

That is a rather general question.

Mr. DAVIS. Yes.

Well, sir, as I said before, I did not really have any particular qualms against the Motor Carrier Act of 1980. If we, in our capability today, can measure what our industry needs, if we could measure our capacity costs or make some estimates concerning what the capacity costs are, balance that with entry, then I think we would have achieved what we tried to do in the motor carrier industry in the Motor Carrier Act of 1980.

In the rate area, if we try to develop some new pricing schemes, if we try to develop a pricing scheme that meets certain demands; and yet at the same time those pricing schemes are free from undue preference, prejudice and discrimination, I think we could live with that.

And I really don't know how to answer what is meant by "fair working conditions" but I could only conclude that restructuring of the industry with a significant impact on employment is not what we are trying to do.

I am not suggesting a full employment act for truckers.

I guess, Congressman Anderson, that my feeling is that the common carrier duty to serve, the common carrier duty to charge a reasonable price, to avoid undue discrimination, that's a philosophical commitment. That's a philosophy.

We could argue regulation-deregulation, costs, rates, all day long. But I guess that what disturbs me about this entire debate is to treat transportation as just another commodity to throw on the market.

It has traditionally enjoyed a social role. We have tried to do something in the social area with our transportation system; and today, as I see things, it no longer has a social role.

Or at least, that seems to be the way the act is being implemented.

Mr. ANDERSON. Mr. Shuster.

Mr. SHUSTER. No questions, Mr. Chairman.

Mr. ANDERSON. Well, thank you very much, Mr. Raznick, Mr. Henderson, Mr. Davis, for your fine presentations.

Our next panel is, first, the Owner-Operators Independent Drivers Association of America, Mark Perry, the director; second, the Independent Truck Owner-Operators Association, Marshall Siegel, the executive director; third, the Truckers Action Conference—Maryland Independent Truckers and Drivers Association, Rita Bontz; and fourth, the Owner Operators of America, Charles C. DeVaul, the executive secretary.

The full text of your prepared statement will appear in the record at this point.

[Statements referred to follow:]

Owner-Operators Independent Drivers Assn. of America

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Testimony of OOIDA: Motor Carrier Oversight
U.S. House of Representatives
October, 1983

Mr. Chairman, members of the Committee, my name is Mark Perry and I am Director of Government Affairs for Owner-Operators Independent Drivers Association of America (OOIDA), the largest group of owner-operators in the nation. I am pleased that we were a part of that group which, in a letter sent this committee, over five months ago called to your attention the problems that we in the motor carrier industry are having. I am at pains to recall that our group supported the Motor Carrier Act of 1980, because under it owner-operators were protected, because under its provision "lumping" and a mandatory contract of haul were addressed in a rational and reasonable manner. And we supported the important parts of the bill because under it ratemaking would still be a rational and closely-monitored process. We supported the Motor Carrier Act of 1980 because we thought it was a big step forward for owner-operators, and contained adequate protections for them. We saw the act as Congress' way of reaffirming the importance of the small businessman as an integral part of the motor carrier industry.

Now, three years and some months later, we as owner-operators are forced to admit that we were duped. Whatever rate stability there was in 1980 is gone. The contract of haul is a dream, and was purposely and totally ignored by the ICC after the sham of packed hearings and secret meetings. The ICC never had any intention of providing for a contract of haul and, to our mind, purposely flaunted the purpose of that provision of the Motor Carrier Act. Lumping is still an industry-wide scandal, and one Commissioner (no longer on the ICC) testifed that "lumping" just "wasn't a problem." The common carrier obligation to serve has been studiously ignored, the Commission has set aside petitions and testimony on the problems of the industry in the name of "competition" and worse yet, the American public has been treated to the unseemly sight of ICC Commissioners scrambling to "be the last Chairman of the ICC."

Mr. Chairman, the ICC's lack of action in regard to the Motor Carrier Act of 1980 is nothing less than a national scandal.

Since 1980, over 40 percent of all owner-operators have been put out of business. Rates have fallen as carriers have entered new markets. According to our own study, which I will submit for the record, the cost of operation for an average single-truck owner-operator now stands at $1.16 per mile, if that owner-operator runs 120,000 miles per years. Rarely, if ever, has anyone in our industry seen anything near that level of compensation. In fact,we have found that most owner-operators are now hauling commodities for compensation in the range of $.80 to $.90 cents per mile. It is only a matter of time before owner-operators hauling at this rate will also go out of business. We theorize that the only reason there remain any owner-operators today is because of the easy method of entering the industry. But the turnover in the industry gives us pause: a recent survey conducted of our members indicates that many who have recently entered the industry will be out of business in six months. In essence, what we have created is a permanent class of impoverished small businessmen--a class of people who enter the industry, haul for six months, and leave the industry. The impact of this is only now beginning to be felt: the expertise which characterized the owner-operator segment of the motor carrier industry is being destroyed--the public is being served by a group of small businessmen whose permanence is questionable, whose experience is non-existent, and whose abilities have not yet been proved.

It is only a matter of time, Mr. Chairman, before all of this catchs up with our industry, before it becomes plain to everyone that the motor carrier industry is just not getting the job done. It will only be a matter of time before there are few trucks left capable of hauling the necessary commodities to our markets. We may say that there will always be people dumb enough to enter an industry at which they don't have a prayer of ever, even making a living.

The word is out: if you want to go broke, go buy a truck.

Mr. Chairman, let me be even more blunt. Because owner-operators do not have the financial capabilities of earning a living, they certainly do not have the financial wherewithal to maintain the equipment they now have. Our industry is an accident waiting to happen. In essence, the owner-operator will do anything to feed his family, even if it means taking money out of his truck (and postponing the purchase of those new tires). The owner-operator is eating next years overhaul, because he doesn't have any choice. The result of our present financial problems is that owner-operator equipment, across this industry, is deteriorating.

Now, some would have you believe that the reason for this is that the owner-operator is an idiot who just wants to use his truck as a lethal weapon, that he's a hater of life and of "four-wheelers"--that he should be fined into oblivion, inspected, taxed, jailed, fined, handcuffed, admonished and finally driven from business for his oversight of safety. Deregulators speak up for more safety regulation, at greater costs--but they will not provide by law, an environment whereby owner-operators can even afford minimum maintenance costs of their own trucks. Indeed, the ICC talks endlessly of safety, and quibbles about the economic condition of the industry they are in business to regulate.

The ICC's penchant to count anything as an "innovative price" and nothing as "anti-competitive" has made inevitable the passing-away of the owner-operator. The "level playing field" concept of deregulation in other industries (the concept is used in banking deregulation, for instance), is non-existence in ours. The ICC seems to believe that a smaller carrier, and an owner-operator, will somehow survive because they will be "more efficient." It's a strange and perverse twist of logic. Everyone knows that if you enter a poker game with $5 against another player with $200 it's only a matter of time before you lose. It doesn't matter how good you are.

Yet, lest my remarks be misinterpreted let me add--there are large carriers in the nation who are now facing immanent financial ruin. Even they cannot survive under the present environment. Literally dozens more have already gone out of business. While public attention is focused on two airlines which have gone belly-up, the executives in our industry sadly shake their heads, because they know what the public doesn't--that what is happening in motor carriage makes what the airlines are going through look like good economic times. In the end frustration sets in--particularly when the economic health of our industry is measured by the stocks of the five largest companies. Such a point of view can only be considered a vicious and cynical disregard of the truth.

How do we retrieve this situation?

Mr. Chairman, we at OOIDA believe that rates must be stabilized. We do not ask for a guaranteed income. But we do ask that somehow owner-operators be compensated at least for their cost of operation. An owner-operators cost must be considered in the setting of rates. We have submitted a cost-of-operation petition to the ICC, as have a number of other groups, including the International Brotherhood of Teamsters. Both petitions were denied, out of hand. We would like to submit our cost of operation petition for the record.

Further, Mr. Chairman, the ICC must be made to obey the law, just like the rest of us. We have nothing against innovative pricing, but we do not know what it is--no standards or limits have been set by the ICC. In an effort to deregulate our industry, something which we believe the Congress did not intend, the ICC has allowed any rate to become effective. The ICC must be made to define its terms, to follow the provisions which this Congress set down, to tell the industry under what circumstance a rate is "anti-competitive," and when it is not.

Finally, Mr. Chairman, the Congress must clearly tell the ICC just what its intentions are in regard to deregulation. While oversight of the bill can be helpful, too many things have been allowed to slip under the rug when no one was watching. Knowing full well the importance of other issues facing you, I still must say there can be no substitute for a careful day to day monitoring. It's clear to us that without such monitoring, the ICC will do exactly what they want.

Mr. Chairman, I would like to insert a personal note here. For ten years OOIDA has been an integral part of this industry. For ten years we have served our members well. We have always been a rational voice for change and have very purposefully counseled our members that radical actions cannot and will not change the economic facts of our industry. We have engaged in educational programs to make our members not just better drivers, but better citizens. We have engaged in educational programs to tell our members about our government and how it works, and we have made them proud to be a part of this system.

Yes, it is very tragic that our industry is evaporating, that thousands of owner-operators have gone, and will go, out of business. But more tragic, and far more critical at least to my mind, is the fact that owner-operators just don't trust their own government any more. They are dropping out. In academic parlance, they believe that the "contract" the social contract which has existed between their government and themselves for decades has been broken. They don't think that they have broken it, they think you have. And they now believe that "anything goes."

I am left wondering whether deregulation, and all of this superficial talk about the marketplace, is worth that. I have to conclude that it just hasn't been, that somewhere, without anyone really intending it, a terrible mistake has been made.

I appreciate the opportunity of making my views, and the views of our members, known.

STATEMENT OF MARSHALL SIEGEL, EXECUTIVE DIRECTOR, I-700, INDEPENDENT TRUCK OWNER-OPERATORS ASSOCIATION

Mr. Chairman and members of the Subcommittee, I want you all to know that I appreciate the opportunity to appear and testify on this matter of paramount interest to our membership. The Independent Truck Owner-Operators Association, called I-TOO for short, is a group of over 5,100 owner-operators, merchant vendors who sell to owner-operators, finance companies who finance owner-operators, and trucking companies that employ owner-operators. It is an organization of, by and for the owner-operator. Other classes of members of the association may join only after they are investigated and approved as being persons who have a record of dealing fairly with owner-operators.

I-TOO has members in every state of the union, and our membership is growing rapidly. The organization is about two years old. We represent a responsible alternative to the owner-operator, unlike those organizations that were responsible for or supported the trucking strike earlier this year. We thought it unwise at the time, and actively opposed it. I-TOO works for the good of the owner-operator, and assists him or her in getting into business and staying in business through furnishing of operational information, general business advice, and as an information disseminator. Up to this point, we have been relatively inactive in politics, but I can assure you that we intend to make certain that our membership and their friends are aware of what the administration and others have done and are doing to and for our members and others in the trucking industry.

First of all, I know that what I am about to tell you will not be liked by certain members of this Committee, but I intend to tell it like it is. For too long, it appears that members of this Committee have either been insulated by their staffs from the reality of our problems, don't care about our problems, or are so ideologically hell bent to deregulate everything that some of you may not care what the facts are.

In my opinion, the Motor Carrier Act of 1980 is a fairly decent piece of legislation that has been essentially ignored by the Interstate Commerce Commission, in its headlong rush to commit institutional suicide. As I have earlier stated on several occasions, those members of the Interstate Commerce Commission who cannot fairly read and interpret the law, which does require regulation, ought to have resigned a long time ago. It is absolutely incredible that this Committee, charged with oversight of the Interstate Commerce Commission, should have allowed the situation to deteriorate to the point that it is in. Your oversight hearings to this point have been a cursory kiss-off. Nothing of any substance has emerged from them.

The foot dragging that has gone on concerning appointments to the Interstate Commerce Commission underscores the inattention which has been given to transportation regulatory matters. One nomination, that of Paul Lamboley, has been languishing almost a year. Another nomination, that of Jane Holt, has been in limbo since last April. This is positively disgraceful. Transportation regulation is entirely too important a factor in our society to be ignored like it has been ignored to date. Railroads are getting away with bloody murder, and are keeping two sets of books - one in which their track structure is accounted for using the so-called betterment accounting system; this is what is reported to the ICC under ICC regulations. But, to their stockholders, the railroads use a depreciation system of accounting, which is called for by the Securities and Exchange Commission regulations. A comparison of the bottom line results for a railroad could mean the difference between a $20 million loss under betterment accounting, and $25 million profit under depreciation accounting for the same year. Yet all we hear about is how revenue inadequate the railroads are. It is baloney, political claptrap, and is another clear indication of how biased the Interstate Commerce Commission is in favor of railroads and, also I might add, against the trucking industry.

It is important to note that the major proponents of trucking deregulation - and that is what has occurred, despite what the law says - are economists and those obsessed with an ideological approach rather than a pragmatic approach to our problems. These same economists can't predict a downturn in the economy, can't predict when the economy will turn up, can't predict the length of the recession, can't predict the length of a recovery, and in fact, can't predict anything very well. Such a group does not inspire confidence, as has been pointed out in a recent book by M.I.T. economist Lester Thurow, entitled, "Dangerous Currents: The State of Economics."

The one thing that economists are certainly good for is analyzing those things that have happened in the past. Well, in the case of the trucking industry, and in particular with respect to owner-operators, the things that have happened in the past since 1979 have been unmitigated disaster. From approximately 300,000 owner-operators in 1979, the number has decreased to approximately 100,000. This drop in the number of owner-operators can only be described as an unmitigated disaster. The owner-operators have been made the economic kulaks of our modern day United States, and it is high time that you all realized this.

As you can tell, we are not very happy with the state of affairs. With this preamble, let me now discuss the issues.

I. THE EFFECTS OF THE MOTOR CARRIER ACT OF 1980 ON THE TRUCKING INDUSTRY, SHIPPERS, LABOR AND CONSUMERS

The effects of the Motor Carrier Act of 1980 on the trucking industry and labor have been disastrous. As pointed out previously, approximately two-thirds of the owner-operators have been forced out of business by the direct effects of trucking deregulation as administered by the Interstate Commerce Commission. Owner-operators are true small business persons in the trucking industry, and we are the ones who have taken it on the chin from the free market freaks that currently seem to be in control at the Interstate Commerce Commission. Now let me be certain that you all understand that I don't have anything against the free market. It is a fine and wonderful institution, to the extent that it works. But what you must understand, and what I don't think some do understand, is that you cannot have a free market in goods without transportation services to get those goods to the market place. Moreover, I am told by many shippers who use trucking service that a dependable, reliable, economical and fair transportation system is what is needed for our economy to work right.

Currently, there is unfair competition in trucking going on all over the country. Desperate carriers set rates so low that they can't possibly make any money. Trucking companies using owner-operators have to compete with other trucking companies that either don't know or don't care what their true costs of operations are. As a result, trucking companies do not pay and cannot pay owner-operators a fair amount. The owner-operators - and the trucking companies as well - are eating up their own capital resources in order to merely stay in business, in the hopes that things will get better. Responsible regulation would have prevented this.

The Interstate Commerce Commission has the authority, delegated to it by Congress in the Motor Carrier Act of 1980, to cut out the pernicious practices that have so far caused over 300 trucking companies representing over sixteen percent of industry capacity to go belly-up. But the regulated trucking companies that have ceased doing business, gone into bankruptcy, or severely curtailed operations are the mere tip of the iceberg, when you consider the 200,000 owner-operators that have been forced out of business. Moreover, the ICC has curtailed the filing of annual reports by Class III (Small) Motor Carriers, and has destroyed the data base necessary to evaluate the ICC's own actions.

In my opinion, the effect on consumers of all of the rate cutting that has gone on has been negligible; your large companies have simply retained in their own bottom line whatever they could in transportation costs saved. The administration of the Motor Carrier Act of 1980 thus far has resulted in tremendous reallocations of capital resources and profits in our society, to the extreme detriment of the trucking industry, including owner-operators and its labor. There have been negligible benefits passed on to consumers, in my opinion, particularly by large companies which belong to the National Association of Manufacturers, such as Lever Bros., Inc. Many shippers, particularly those of less-than-truckload freight, have thrown up their hands in disgust at the way the ICC is working these days, and in frustration have called for elimination of all anti-trust immunity for motor carrier rate bureaus. Indeed, many people think that what we have now is worse than nothing at all, so why not get rid of it. But that begs the issue: The problem is not the Motor Carrier Act of 1980 or the Interstate Commerce Commission, the problem is the Interstate Commerce Commission commissioners. I will have more to say about this later, at a more appropriate point in my testimony.

The question of the impact of the Motor Carrier Act of 1980 on independent owner-operators has been asked of me by the Secretary of Transportation, and I replied to her in my letter dated May 3, 1983, a copy of which I have attached as Appendix A. Things have not improved since then.

The overcapacity in the trucking industry has been rampant. This has been accentuated by policies of this administration and the Interstate Commerce Commission clearly designed to increase the railroad share of the intercity freight market. How, in the name of common decency, can those who are performing this conscious market reallocation speak in terms of letting the free market reign? Such hypocracy may be an everyday affair to you here in Washington, but to those of us in the hinterlands, it is unacceptable.

Most of the comments that I have referred to earlier concern the truckload freight portion of the trucking industry. The situation is quite different in the LTL field. Of course, in the small package field, United Parcel Service (UPS) has a monopoly, save for that competition generated by the United States Postal Service and some miscellaneous, small carriers. This is because the cost of instituting an areawide or nationwide service for the fast transportation of small packages is exceedingly high. Concentration in this segment of the industry has increased to the point where there is essentially one nationwide non-governmental carrier.

With respect to the less-than-truckload (LTL) carriers (other than those carrying small packages) in the country, it is quite clear that the concentration is increasing dramatically (from 30 percent to 50 percent since 1980 for the largest carriers' market share) as the medium sized carriers are forced out of business through the destructive practices engaged in by large carriers through the use of discounting tactics. A loss leader may be fine for a supermarket, but when applied in the trucking industry, it can drive companies out of business, and has done so. Yet our old standby, the Interstate Commerce Commission, doesn't want to take the trouble to really get into the situation. In Ex Parte No. MC-166, in a report served appropriately enough on September 13, 1983, the Interstate Commerce Commission has again refused to establish standards for review of discounting and "innovative" pricing techniques. This is just another example where the Interstate Commerce Commission has refused to regulate rates, which it is charged by law with doing.

It has been said by academicians of some note that, within the next few years, there will be four or five giant nationwide LTL carriers, approximately 20 medium-sized regional LTL carriers, and that will be about it. Already, the trend of bankruptcies involving medium sized LTL carriers foreshadows the final playing out of this trend. When the sixth largest carrier in the country (Spector - Red Ball) goes bankrupt, shouldn't that tell you a little something?

In the truckload freight business, there are some very large carriers, with the medium sized carriers being weeded out, and a large number of small carriers springing up. Conditions are chaotic, because of the lack of entry control, particularly as it relates to fitness, as well as to the need for new service. Overcapacity has been endemic, although it didn't have to be if the ICC had acted properly in controlling entry.

To summarize, it was not the effect of the Motor Carrier Act of 1980 on us that was disastrous, but it was rather administrative deregulation by the Interstate Commerce Commission that has caused our problems. I will address this aspect later, but it is necessary to understand that we do not condemn the Act, but only the actors.

II. IS FURTHER REFORM OF THE TRUCKING INDUSTRY NEEDED?

Very few would return to the days of 1976, in terms of rolling back the deregulation clock. However, if reform is a code word for further deregulation, then certainly further reform is not needed. If, on the other hand, reform may be used in its true meaning, then yes, indeed, there is need for reform, as soon as possible, to reestablish stability in the trucking industry.

We propose that the issue of regulation be addressed pragmatically. There is no simple answer. We must find a position somewhere between total regulation and total deregulation, and then a reinvigorated Interstate Commerce Commission should proceed to get off their backsides and go to work, instead of pontificating about how marvellous it is that regulation really isn't needed.

Reform of the trucking industry can best be occasioned by reform of the Interstate Commerce Commission, and the way the commissioners are appointed. As I mentioned earlier in this statement, I suggested in my comments on S.48 a better way for the appointment of ICC commissioners. Attached as Appendix B is a copy of my letter to Sen. Packwood transmitting the comments, which are themselves attached as Appendix C. Appendices B and C were also sent to all members of the Senate Commerce Committee and other key members of Congress. Such an approach would be analogous to a judicial nominating committee approach. It would eliminate the delays in appointment of commissioners, such as have occurred during the last three administrations.

There must be tightening of entry controls, to make the trucking business one which is reasonably stable, reasonably profitable, but not impossible to get into. Economic regulation is a necessity. The present statute, in the hands of a fair-minded commission, would do the job nicely. Rates must be regulated, both on the downside as well as the upside. You cannot have a boom and bust cycle in trucking, and expect to have a trucking system capable of meeting the needs of commerce as well as of national defense. Yet, in my opinion, this is exactly what has happened and what will happen again if responsible entry control and rate regulation are not implemented. Moreover, there must be a fair and impartial arbiter between shippers and carriers. If not the Interstate Commerce Commission, then it must be the courts. But it makes little sense to burden an already overburdened court system with additional work, when a perfectly good mechanism continues to exist for handling the problems. The mechanism will work, however, only if its operators - the ICC commissioners - get back into the business that they were commissioned to be in.

The Congress should give more specific instructions to the Interstate Commerce Commission, concerning regulation of entry control and rate regulation. Since the Motor Carrier Act of 1980 became law, not a single protestant to the granting of new operating authority has carried its burden of proof. Such a situation is ludicrous, and exhibits a basic dishonesty in approach to administering the Act.

I know that there may be those among this Subcommittee who want to totally deregulate the motor carrier industry, but I say to you that it is unwise in the extreme to do so. The grand experiment of deregulation is an ignoble failure, which has blighted the hopes and dreams of millions of people in this country associated with the transportation industry, including their families. Recognize reality; restore responsible regulation; and recognize that if you do not, then the ultimate recourse of those unhappy with the system is the ballot box. I can assure you this has not been overlooked.

III. THE INTERSTATE COMMERCE COMMISSION'S IMPLEMENTATION OF THE ACT

The Motor Carrier Act of 1980 was passed with the support of the motor carrier industry, because it was thought that the Interstate Commerce Commission had to be statutorily directed away from the path of deregulation it was following. Rather than accepting the mandate of an amended National Transportation Policy, the Commission instead has elected to sacrifice the motor carrier industry - and particularly owner-operators - on the altar of the Free Market, to the god Competition. I respectfully submit to you that this was not the intended purpose of the Motor Carrier Act of 1980, and had it been perceived as such, then many of those who supported it and voted for it would not have done so.

The Commission has practically forgotten how to deny an application for new operating authority. No protestant - not a single one - has carried its burden of proof to show that granting of new operating authority would not be consistent with the public interest, under the entry standard contained in 49 U.S.C. 10922, Section 5 of the Motor Carrier Act of 1980. If common carrier authority has been easy to get, contract carrier authority has been even easier. Fitness of both classes of applicants has not been inquired into with _any_ diligence. For example, it is a scandal that operating authorities have been granted to companies controlled by persons in prison. Likewise, operating authorities have been granted to companies having scandalously poor safety records, even to the extent that the Department of Transportation itself is presently suing the Interstate Commerce Commission in the United States Court of Appeals for the District of Columbia Circuit, in _Department of Transportation v. Interstate Commerce Commission_, DC Circuit No. 83-1436. The Commission is no longer interested in the financial or operational fitness of applicants, with the result that companies having no ability to financially support decent safety programs are granted authority right and left. No financial data of any kind is required any longer in order to prove a company's fitness. Instead, the Commission takes the approach that the market place is the best selector of the fit. The Commission is leading us in the direction of a demolition derby, which was never the intent of Congress. A recent program on 20/20, narrated by Hugh Downs, pointed out that deregulation has caused safety to suffer. I agree.

The Commission is not significantly interested in evidentiary proof of need for a proposed service any more, although the statute requires that evidence of need be shown before authority is granted. Those applications which have been denied have basically been denied on default theories, and nothing else. Even then, a protestant finds it difficult to prevail. For instance, the Commission practically demands that an applicant for new authority take authority to transport bulk commodities, even when an applicant states that it does not want such authority and will not operate it. The same is true of authority to transport refrigerated products. By forcing unwanted authority upon numerous applicants, the Interstate Commerce Commission has made a mockery of the common carrier obligation to serve.

Even after direction by United States Courts of Appeals, the Commission has cavalierly gone its own way and done its own thing. Perhaps this is why the Commission has been hit with several writs of mandamus in approximately the last year. Moreover, in one of these instances, a request for a contempt citation was lodged with the court before the Commission finally got around to lackadaisically attempting to comply with the court's orders.

There is only one member of the Commission who apparently knows how to read the law, even though he states he does not agree with it. That is the Chairman. The other three members of the Commission are more distinguished by their knee-jerk adherence to the deregulatory party line than any skills as regulators. In fact, I have called for their resignations if they cannot obey the law and uphold it as they have sworn to do. Others, including the highly-respected Dr. Joe Frye of the University of Tennessee, have called for their impeachment.

Enforcement has been almost totally lacking. Illegal truck operators run rampant without challenge. Rates are being charged that are not now and never have been on file with the Commission. Shippers seek and receive rebates. There are clearly criminal acts. And what do the present-day ICC commissioners do about all of this? Well, I would commend your attention to the transcript of the Commission's

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closed conference on enforcement matters, last fall. The aroma that arises from that document is execrable. Nobody wants to enforce the law. One commissioner says that bribes are ok. Another commissioner says that he doesn't proposed to put up with gumshoe tactics by the enforcement staff. If it were not so expensive, I would have attached a copy of the transcript to this statement. I truly think that each member of this Committee should read that transcript and judge for himself just what kind of enforcement effort can be expected from this group of Commissioners.

It has often been said that if this country goes down the tubes and is beaten by the communists, it will be because of internal subversion, and not because of external factors. If the motor carrier regulatory system in this country goes down the tubes, then it will likewise be from subversion within. Make no mistake about it: Several of the commissioners have absolutely no intention of regulating pursuant to the Motor Carrier Act of 1980. They should be removed, in some fashion, so that they could be replaced with dedicated and fair-minded public servants who are knowledgeable in transportation matters before they are appointed. For too long, the Interstate Commerce Commission has been considered a third rate body, to be staffed in many cases with commissioners of like ability. We are now seeing the culmination of that trend.

October 25, 1983

Deregulation has not worked. It has caused problems in the airline industry, in the motor carrier industry and in the railroad industry. You have a runaway Interstate Commerce Commission on your hands. When two-thirds of the Senate, as well as a sizable number of members in the House of Representatives, tells the Commission that it is unhappy with its actions in the rail boxcar case, and the Commission in effect thumbs its nose at this Congress by refusing to even hold further hearings, then does anyone really have to tell you more that something is wrong? Are you going to do something about it, or are you just going to go along and do business as usual? The one thing I can assure you is this: Your failure to act to restore sanity to the way the Interstate Commerce Commission operates will force us into the political arena to seek redress. The situation is dangerous; we are in the eleventh hour; in the name of fairness and justice, we beseech you for help. I-TOO believes in the dignity of work, and in the opportunity for every man and woman to earn a decent living. That decent living is presently beyond the reach of the owner-operators of this country because of what the Interstate Commerce Commission has done to us.

Respectfully Submitted,

Marshall Siegel
Executive Director

I-TOO INDEPENDENT
TRUCK OWNER-OPERATORS ASSOCIATION

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May 3, 1983

The Honorable the Secretary
of Transportation
Room 10200
Office of the Secretary
of Transportation
United States Department
of Transportation
400 Seventh Street, SW
Washington, DC 20590

Dear Madam Secretary:

This letter is being written in response to your office's inquiry to me concerning the following:

1. What is the impact of the Motor Carrier Act of 1980 on independent owner-operators?

2. If there is future deregulation, what would the impact be?

3. What is the owner-operator position on further deregulation of the trucking industry?

I find it difficult to believe that my answers to these questions will have any meaningful impact, particularly in view of your interview with U.S. News and World Report, found in the current issue. You also spoke to the Private Truck Council of America in Atlanta, Ga. on April 29, 1983, and are quoted in the Journal of Commerce for May 2, 1983, as saying that "the Administration is convinced that motor carrier and freight forwarders would operate more efficiently and at greater benefit to shippers and consumers if they were free of economic regulation." We respectfully submit that you have been most grievously misled if these are your final conclusions.

Following are the answers to the questions you requested, numbered the same as the questions above.

1. The impact of the Motor Carrier Act of 1980, as administered by the Interstate Commerce Commission, has been to devastate independent owner-operators. The ICC has been totally irresponsible in the way it has implemented the Motor Carrier Act. It has essentially scuttled entry controls, and has performed little or no meaningful rate regulation. People have been appointed to the Interstate Commerce Commission who are sworn

APPENDIX "A"

enemies of regulation, and who have attempted to gut the system from the inside. We are supposed to have a goverment of laws and not of men; what has happened to our government? Fairness has departed, and an ideology has been implanted which seems to feel that the end justifies the means. Disaster has overtaken the owner-operator in the wake of the Motor Carrier Act of 1980. In my estimation, and in the estimation of our membership, many of our fallen comrades could have been saved if the Interstate Commerce Commission had fairly done its job. Thousands of owner-operators have gone bankrupt due to poor regulation by the ICC and not due primarily to the basic state of the economy.

2. In our estimation, the impact of further deregulation would be agony, turmoil, and more bankruptcies by owner-operators. Why can't you people understand just how hard it is out here? We have been beating our heads against a stone wall to try to make you understand that deregulation has ruined and is ruining the way we make a living. The average owner-operator cannot support a marketing and sales organization that is necessary in order to assure that he gets freight to carry. For this reason, owner-operators must lease themselves and their equipment to carriers. By comparing the abuses that are rampant in the exempt commodities field with the treatment received by owner-operators at the hands of regulated carriers, we are convinced that owner-operators are more unfairly treated as a group by those companies which are not subject to government regulation. At least we have the theoretical right to complain to the ICC about our treatment, although the ICC's enforcement program is a pitiful shadow of its former self. Further deregulation would end whatever protection we have remaining at the ICC. We are not talking about a theoretical problem: we have many members who have told me that they go home at night and cry over their financial prospects, and they do not see how they can make it if things do not change. This is the reality of deregulation. Aren't you smart enough to see it?

3. The policy of the Independent Truck Owner-Operators Association is that it is opposed to further federal deregulation of the motor carrier industry. It supports regulatory appointments and legislation that would restore some semblance of sanity to federal regulation of the trucking industry. ITOO supports entry controls, rate regulation, a strong ICC enforcement program, and strongly believes that an owner-operator has the right to make a decent living in this country. Deregulation may be good for the fat cats and big mules, but for our membership it has been an unmitigated catastrophe.

What we face is the same thing that conservative politicians accused the liberals of doing for decades: government bureaucrats thinking that they know better than we do what is good for our industry. Well, you don't. Come out of your ivory towers — look and see the wreckage of companies like Gordons Transports, which just a few days ago went into Chapter 7 after an unfruitful attempt to reorganize under Chapter 11 of the bankruptcy law. Look at Osborne Truck Line, a small, family-owned company

May 3, 1983

started during World War II to serve this country's needs, which just last week filed its own petition for relief under Chapter 11 of the bankruptcy law. Look at Spector Redball, Inc., which was the sixth largest carrier in the country when it went out of business. All of these companies extensively used owner-operators. There are hundreds more.

You people are insane to think that deregulation is working and that it has helped the industry or, ultimately, the consumer. A Sears Roebuck, Lever Bros., or Union Carbide can certainly fend for itself, and probably always will get the service it needs by its economic muscle. But your average consumer cannot adopt this tactic, and ultimately is going to suffer for the benefit of these giant companies. The railroads also are having a field day; the previous Secretary of Transportation was former chief executive officer of a railroad undergoing bankruptcy reorganization, and it is obvious that he had no real regard for the problems of the trucking industry, including those of owner-operators.

One way or the other, owner-operators have got to get this mess cleaned up. It may be that the only way we can do it is by organizing and becoming a partisan political force. I hope we do not have to do this, but rest assured that the final recourse in our Republic is the ballot box, and we will not put up much longer with the cavalier disregard that this Administration has shown to our industry.

I hope that the foregoing comments will be taken in the constructive spirit in which they are made; but I think it is important for you to realize that we are mad as hell, and we intend to do something about it.

Sincerely,

Marshall Siegel

Marshall Siegel

MS/WPJ/bsd

I-TOO INDEPENDENT
TRUCK OWNER-OPERATORS ASSOCIATION
114 WILL DRIVE CANTON, MA 02021
617-821-0021

May 17, 1983

The Honorable Robert W. Packwood
U.S. Senate
Senate Office Building
Washington, DC 20510

Re: Transportation Improvement
Act of 1983
S. 48

Dear Senator Packwood:

Hearings on the above bill were scheduled for April 26-27, 1983, but were postponed. Prior to that time, I had prepared written testimony to be submitted to your committee, and had also requested the privilege of testifying orally before your committee on this highly important subject.

Subsequent developments now make it appropriate that I submit to your committee the testimony which I earlier had prepared. Fifteen copies are enclosed. Please accept this as a part of the record in connection with the hearing process on S. 48. Also, at the time hearings are actually held, I would like the privilege of testifying to more fully develop our position.

Also enclosed is copy of letter which I wrote, at the request of her office, to Secretary of Transportation Dole. We are very unhappy with the fact that the railroads are apparently controlling truck legislation, and with the undue influence the railroads are exerting over the Interstate Commerce Commission. Moreover, the Interstate Commerce Commission has greatly exceeded the bounds of propriety in its administration of the Motor Carrier Act of 1980, carrying its bias in favor of deregulation to such extremes that one can only wonder where all of this will stop. It is a runaway Commission, and it should be stopped. Oversight hearings and remedial legislation are long past due.

It is time for a statesmanlike approach to the issue of transportation regulation: without regulation, this country's trucking industry will grind itself into the ground, as happened prior to 1935 and is happening presently. Without regulation, the railroads will again be worthy of their ancestors' robber baron reputations. There is no place for a nobility, and certainly not one of that sort, in our great Republic. It has been almost three years since the Motor Carrier Act of 1980 was signed into law on July 1, 1980, by President Carter. That Act was supported by many elements in the motor carrier industry, including labor and owner-operators, because of the runaway actions of the Interstate Commerce Commission, particularly under Chairman Daruis Gaskins who is now an executive of the Burlington Northern Railroad. It is time to call a halt to the insane nonsense of deregulation for deregulation's sake. A more pragmatic approach is indicated, and I would hope that you have the intestinal fortitude to reassess your position, which will not be easy and certainly not politically expedient. The question is what is best for the United States and its citizens.

Deregulation has taken its toll of our transportation infrastructure, particularly in the for-hire trucking industry. Shippers are losing rail service right and left. Owner-operators are going bankrupt by the thousands, and regulated motor carriers are going out of business by the hundreds. This trend started building steam under the administrative deregulation of the Interstate Commerce Commission. The late recession was the first one since 1935 during which trucking companies and owner-operators went out of business in such large numbers. The correlation is clear to those who come out of their ivory towers and view the damage. We call on you for help in this matter. Our cause is just and right, and we intend to prevail. Will you help us?

Sincerely,

Marshall Siegel

Marshall Siegel

MS/WPJ/bsd

Enclosures

STATEMENT OF
INDEPENDENT TRUCK OWNER OPERATORS ASSOCIATION
ON TRANSPORTATION IMPROVEMENT ACT OF 1983, S.48

My name is Marshall Siegel, and I am Executive Director of the Independent Truck Owner-operators Association (I-TOO), 114 Will Drive, Canton, Mass. 02021. My telephone Number is (617) 821-0021. I-TOO is an organization composed of owner-operators and those who do business with owner-operators, including merchant vendors, carriers who contract with owner-operators, and finance companies. I-Too currently has more than 4,400 members nationwide, and is growing every day.

I-TOO vehemently opposed the irresponsible action of a few misguided persons, including Mike Parkhurst and his organization, during January and February of this year. I-TOO opposed the horrible increase in truck taxes passed by the Lame-duck Congress, and continues to believe that such taxes are unjust and inequitable. I-TOO is continuing to press for a legislative solution which would include a diesel fuel tax differential, such as the Williams-Applegate Bill, H.R.1067, which we have supported since Feruary of this year.

I-TOO is not affiliated with any trucking organization, but is an independent group dedicated to the welfare of the owner-operators of America. That is why I am testifying in connection with the Transportation Improvement Act of 1983, S.48.

We oppose the bill in its entirety, for reasons which I will go into. We also have an alternative proposal to present to you.

Sen. Packwood and some others on this Committee bear a great deal of responsibility for the problems caused to the owner-operators of this country today because of the neglect of this Committee, the Interstate Commerce Commission has proceeded far beyond what I conceive to be the original intent of Congress in passing the Motor Carrier act of 1980. The Motor Carrier Act of 1980 did not say free entry. The Motor Carrier ACt of 1980 did not say "pauperize owner-operators". The Motor Carrier Act of 1980 did not say let the free market rule rates. By straining the interpretation of the Motor Carrier Act of 1980 beyond comprehension, by ignoring court mandates, and closing its eyes to the real world, the majority of the Interstate Commerce Commission has abdicated its responsibility. It seems that some sitting Commissioners are hellbent on leading the Interstate Commerce Commission into institutional suicide. Indeed, isn't that what has given rise to this bill?

For too long ,the Interstate Commerce Commission has been used as a payoff playground for politicians. Indeed, the present make-up of the Interstate Commerce Commission includes a Congressman's wife, a former Commission employee who so hated the ICC that he is bound to destroy it, and a card carrying teamster who says that bribes are okay (under certain circumstances). They are out to destroy regulation. Mr. Chairman, the problem is one of integrity: if these people can not support the law as it exists, after taking the oath of office to do so, then they should resign. What happened to the integrity of the Environmental Protection Agency has also happened to the integrity of the Interstate Commerce Commission: it has dissolved under the acid rain of partisan politics.

Despite all the foregoing comments, we owner-operarors believe that a place exists in trucking regulation for the interstate Commerce Commission but under somewhat different cicumstances. The answer is not to abolish the Interstate Commerce Commision; rather, the answer is to abolish the Commissioners, and start over again. Let me outline how we propose this to be done.

First, an Interstate Commerce Nominating Commission should be established, consisting of eight members. Four members should be appointed by the Speaker of the House of Representatives,and four should be appointed by the President of the Senate. The terms of office should be for four years each. Terms should be staggered, so that two new members should be appointed for the Nominating Commission each year. Two members should represent the motor carrier industry, including owner-operators; two should represent the railroad industry; two should represent other regulated segments including freight forward ers and water carriers; and two should represent shipper interests. Persons holding public office would not be eligible to serve. In each of the foregoing instances, one Nominating Commission member from each category should be appointed by the Speaker of the House, and the other by the President of the Senate. The Chairman of the Nominating Commission would be elected by vote of the members of the Commission.

The Commission would work similar to a Judicial Nominating Commission, with some refinements. First, the Commission would meet only at the call of the Chairman, to consider a specific vacancy on the Interstate Commerce Commission. The vacancy would be advertised in the Federal Register, and candidates invited to submit their names to the Nominating Commission.

The President would be required to advise the Nominating Committee prior to solicitation of candidates whether or not he intended to appoint a member of his own party or of some other party. Based upon this information, yhe Nominating Commission would submit to the President a list of three names, being those candidates considered most highly qualified from the names of all the candidates. The FBI previously would have given clearance for these three names.

The President would have sixty days from the date of receipt of the names to appoint one of the three to the Interstate Commerce Commission. Upon failure of the President to act by the deadline, the first name on the list would automatically be submitted to the Senate Commerce Committee for its consideration. In this case, the President's silence would be construed as his assent.

One of the problems which faces an appointee to the Interstate Commerce Commission has been getting a hearing before this Committee. Therefore, our proposal includes a provision that would require the Senate Commerce Committee to approve or disapprove the nomination, and make its report to the full Senate, within 20 legislative days after the nomination is received by the Committee. It is perfectly obvious that the full Senate cannot-and should not- be forced to act on any given timetable. However, it is very important that the procedural hurdles be kept to a minimum in the confirmation process.

Once a Commissioner has gone through the process which I have outlined, then if that person seeks reappointment, the name of that Commissioner should be the number one name on any list submitted to the President. Thus, a Commissioner can do his duty according to his conscience, without jeopardizing his reappointment prospects. On the other hand, if a President decides absolutely not to reappoint an individual, the President shall have the right, upon notice to the Nominating Commission, to exclude the Commissioner from the list.

The Nominating Commission approach will do several important things:

1. It will assure to the President that his appointment to the Interstate Commerce Commission will be of a qualified individual

2. It will keep the duration of any vacancy on the Interstate Commerce Commission to a minimum.
3. It will restore the independence of the Interstate Commerce Commission.
4. It will insulate to some extent these appointments from partisan politics.

Those persons presently sitting as Interstate Commerce Commissioners have, in some cases, given up substantial income prospects in order to serve their country. This motivation should not be forgotten, despite disagreement with the manner in which they have conducted themselves. Therefore, the legislation establishing the Nominating Commission would also do the following:

1. Present Interstate Commerce Commissioners would be relieved of all duties and responsibilities, effective upon confirmation by the Senate of their successors.
2. The Commissioners would be redesignated Commissioners at large, serving in the Department of Transportation in such capacities as the Secretary of Transportation might determine.
3. Present Commissioners would continue to draw their full salaries, until the end of their terms of office, unless they earlier resigned.

The matter of chairmanship of the Commission has been a particularly troublesome thing. Prior to 1969, chairmanship of the Commission rotated annually among the sitting Commissioners, with the Chairman being first among equals. President Nixon, in his Reorganization Act No. 1 of 1969, changed the organization of the Interstate Commerce Commission, and gave to himself the right to appoint the Chairman of the Commission. His first appointee, George Stafford, was very fair and able, and had considerable backbone. The same cannot be said of all his successors. Therefore, our legislation will propose that the Commission, after appointment of the new Commissioners, shall elect its own Chairman. A person shall serve as Chairman of the Commission for a two year period, and shall be eligible for re-election.

Why a two year Chairman? Well, a one year Chairman would encounter the same problems that pre-1969 Chairmen encountered in administration, but a term of office longer than two years would give the Chairman too much power over his fellow Commissioners. Why take the power of appointment away from the President? Well, after all, the Interstate Commerce Commission is supposed to be an arm of Congress, operating under delegated authority. The United States Constitution provides that Congress shall regulate Commerce among and between the several states, foreign nations and Indian tribes. The President should not be allowed to usurp this authority.

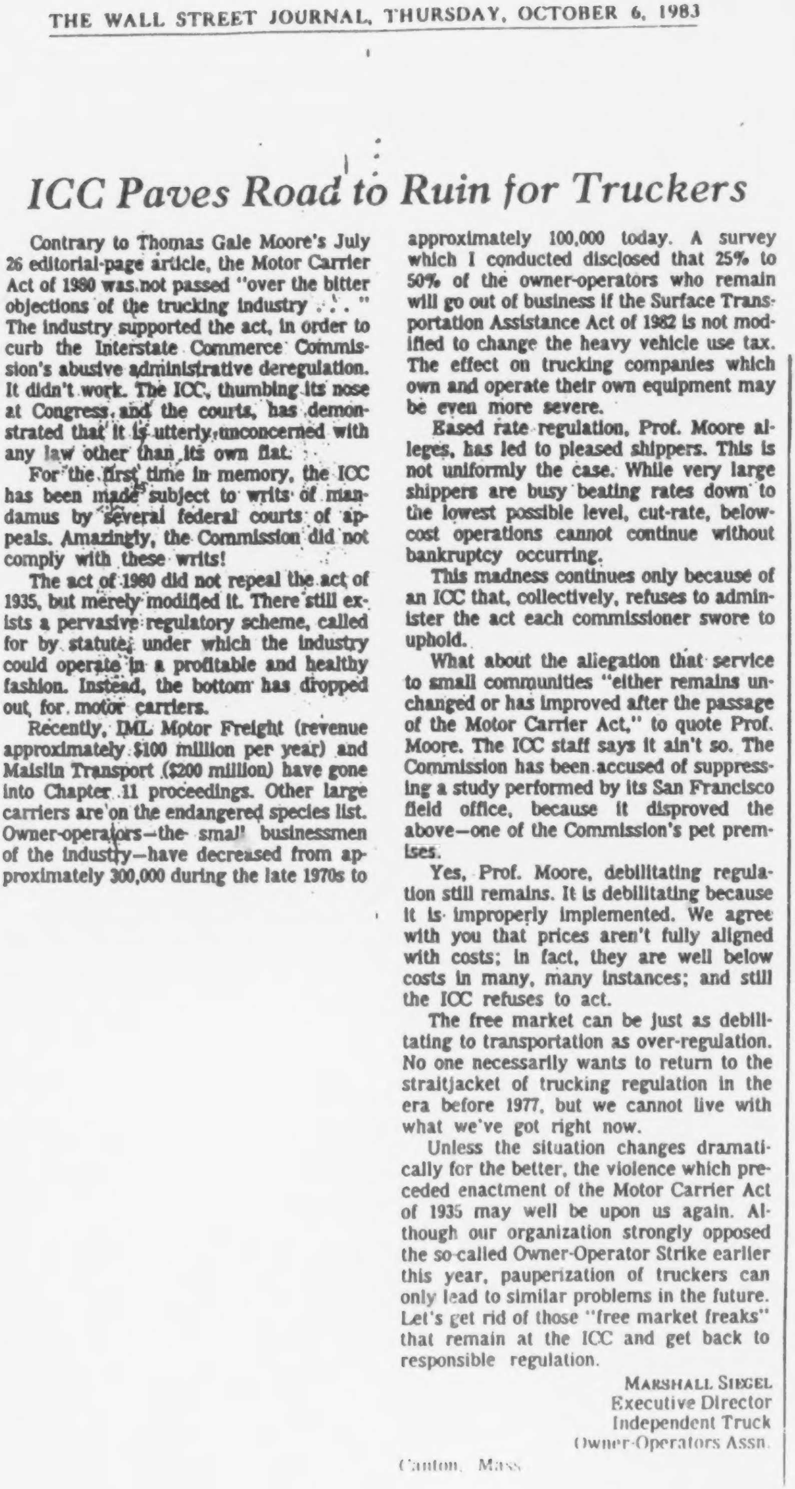
I again reiterate that what is needed is a fair and impartial Interstate Commerce Commission, comprised of members that truly have expertise and experience in transportation. Neither of these criteria are met presently. Establishment of a National Transportation Commission would dilute needed expertise, and give rise to further instability which our transportation system can ill afford. The improvident actions of the Interstate Commerce Commission,coupled with the failure of this Committee to call the Commission to task, has led to conditions in trucking that are the most horrible in history. Were it not for ERISA problems, many more carriers would have gone out of business. As it is, record breaking numbers have closed their doors, both formally and informally.You created this mess; now you should clean it up. Don't dodge like many politicians do. Meet the issue head on, and clean up the Interstate Commerce Commission - don't abolish it.

Now, let us turn to the Intermodal ownership feature of S.48. We strongly oppose allowing railroads to own water carriers or motor carriers without some assurance that the railroads will not use their monopolistic position to enhance the business of their affiliates. The chance for abuse is exceptionally high in,our opinion. Therefore, we support a continuation of a realistic special test before allowing railroads to control other modes of transportation. As it is presently, the so called"special circumstances" test has been administratively weakened by the Interstate Commerce Commission to the point where it remains as only a potential device to correct abuses by the railroads. But it remains, and it should remain.

With respect to freight forwarders, there the situation is quite different. We have no objection to eliminating the statutory technicality that prevents freight forwarders and trucking companies from being operated under common control.

Mr. Chairman and members of the Committee, I want to thank you for giving me the opportunity to tell you the views of our organization. It is only two years old, but we are growing, and growing fast. This is because we, as a responsible organization, are truly concerned with the best interests of the owner-operators. If you adopt our suggestions for creating a Nominating Commission for the Interstate Commerce Commission, 95 percent of the problems that have occurred at the Interstate Commerce Commission in the past 10 years will be eliminated. Where a Judicial Nominating Commission operates, the calibre of Judicial appointments has been notably high. Based upon this, we respectfully submit that the appointment of high calibre, experienced individuals to the Interstate Commerce Commission using our proposals will be greatly facilitated, and will remove what are now nettlesome details which are not being promptly attended to) from the Executive Office of the President.

Respectfully Submitted,
Marshall Siegel
Executive Director
I-TOO,
Independent Truck
Owner-Operators Association



THE WALL STREET JOURNAL, THURSDAY, OCTOBER 6, 1983

ICC Paves Road to Ruin for Truckers

Contrary to Thomas Gale Moore's July 26 editorial-page article, the Motor Carrier Act of 1980 was not passed "over the bitter objections of the trucking industry . . . " The industry supported the act, in order to curb the Interstate Commerce Commission's abusive administrative deregulation. It didn't work. The ICC, thumbing its nose at Congress and the courts, has demonstrated that it is utterly unconcerned with any law other than its own fiat.

For the first time in memory, the ICC has been made subject to writs of mandamus by several federal courts of appeals. Amazingly, the Commission did not comply with these writs!

The act of 1980 did not repeal the act of 1935, but merely modified it. There still exists a pervasive regulatory scheme, called for by statute, under which the industry could operate in a profitable and healthy fashion. Instead, the bottom has dropped out, for motor carriers.

Recently, IML Motor Freight (revenue approximately $100 million per year) and Maislin Transport ($200 million) have gone into Chapter 11 proceedings. Other large carriers are on the endangered species list. Owner-operators—the small businessmen of the industry—have decreased from approximately 300,000 during the late 1970s to approximately 100,000 today. A survey which I conducted disclosed that 25% to 50% of the owner-operators who remain will go out of business if the Surface Transportation Assistance Act of 1982 is not modified to change the heavy vehicle use tax. The effect on trucking companies which own and operate their own equipment may be even more severe.

Eased rate regulation, Prof. Moore alleges, has led to pleased shippers. This is not uniformly the case. While very large shippers are busy beating rates down to the lowest possible level, cut-rate, below-cost operations cannot continue without bankruptcy occurring.

This madness continues only because of an ICC that, collectively, refuses to administer the act each commissioner swore to uphold.

What about the allegation that service to small communities "either remains unchanged or has improved after the passage of the Motor Carrier Act," to quote Prof. Moore. The ICC staff says it ain't so. The Commission has been accused of suppressing a study performed by its San Francisco field office, because it disproved the above—one of the Commission's pet premises.

Yes, Prof. Moore, debilitating regulation still remains. It is debilitating because it is improperly implemented. We agree with you that prices aren't fully aligned with costs; in fact, they are well below costs in many, many instances; and still the ICC refuses to act.

The free market can be just as debilitating to transportation as over-regulation. No one necessarily wants to return to the straitjacket of trucking regulation in the era before 1977, but we cannot live with what we've got right now.

Unless the situation changes dramatically for the better, the violence which preceded enactment of the Motor Carrier Act of 1935 may well be upon us again. Although our organization strongly opposed the so-called Owner-Operator Strike earlier this year, pauperization of truckers can only lead to similar problems in the future. Let's get rid of those "free market freaks" that remain at the ICC and get back to responsible regulation.

MARSHALL SIEGEL
Executive Director
Independent Truck
Owner-Operators Assn.

Canton, Mass.

STATEMENT OF RITA BONTZ, DEPUTY DIRECTOR, TRUCKERS ACTION CONFERENCE

Thank you for the opportunity to appear before you to present a statement on the effects of the Motor Carrier Act of 1980. I am here as a truck owner-operator. My husband and I have owned and operated a 1-truck business since 1962. We have been under lease to the same carrier since 1968.

I am also here to present the views of the Truckers Action Conference, of which I am deputy director; the Maryland Independent Truckers and Drivers Association, of which I am president; and Forward America (a coalition of citizens who are interested in transportation issues) of which I am a member of the board of directors and the executive committee.

We believe that the Congress intended to guarantee the continuation of a safe, dependable and efficient truck transportation system when it passed the Motor Carrier Act of 1980. The Congress was carrying out a mandate set forth by the framers of our Constitution who saw interstate commerce as a potential problem area requiring continual Congressional guidance and regulation. It is clear that our forefathers thought that the public interest could best be served by reserving this importaint power to the Federal body.

Today, 200 years later, public interest is still a matter of prime concern regarding the flow of commerce between the states. But who is the public and are they being served properly? We believe that the Congress, in establishing the National Transportation Policy, was concerned with the consumers, the trucking industry, and the shippers.

The Motor Carrier Act of 1980 was to benefit all of us. It was to encourage competition, lower consumer prices, and remove burdensome Federal regulations.

But what is the current situation? Consumers are not paying less. Most owner-operators and all but a handful of trucking companies are fighting a desperate battle for survival. Freight rates are at an all time low. Operating expenses are at an all time high.

Which public is being served? It appears the best served is the shipping community. It is obvious, we believe, that the dollars taken from the trucking industry are merely being traded to shippers' profits. Consumers do not appear to be receiving a corresponding pass-through.

And all the while, public safety is being undermined. We can no longer accept without question the ability of drivers or the condition of the equipment they drive. Many drivers are underqualified, many are impaired by drugs, alcohol, fatigue, or a bad attitude. In many cases, this type of person is on the road because the pay is so low that higher quality drivers will not accept these jobs. The only reason that inferior drivers can find jobs is because of the rate wars brought on by the way in which the Motor Carrier Act has been implemented. In the past, such people were quickly weeded out.

In our opinion, those who advocate the immediate and total deregulation of trucking are making a serious mistake. Trucking should not be treated in the same manner as other industries. Trucking is unique. Trucks are in constant contact with smaller, more vulnerable vehicles and their occupants. The truck is a huge, potentially devastating engine of death and destruction. People who share the road with trucks have the right to expect those machines and their drivers to be top quality. Those of us are responsible for those trucks—we in industry and you in Government—have a solemn obligation to see that they are as safe as is humanly possible. There is no room for mediocrity where human lives are concerned.

The reason that public safety is being endangered is that most trucking companies must find ways to operate more economically in order to survive. There are few options—cut drivers' wages, reduce maintenance to minimal levels, and postpone equipment replacement. These are dangerous places to scrimp but they have become almost universal practices.

The productivity of each truck unit is finite. Each unit must generate a certain revenue per mile or per hour in order to cover its operating costs. This elementary fact seems to have been misplaced in the furor over price competition. The Interstate Commerce Commission has data on the minimum revenue requirement. It is the ICC's responsibility to insure public safety and dependable service by insisting that all carriers charge realistic rates as a minimum.

We do not expect the ICC to guarantee us a profit. We are not asking for a subsidy. Given a fighting chance, we'll see to our own survival. What we do expect is that the Commission help us to make the difficult transition from total regulation to the free market by providing guidance and leadership to minimize the impact of the 180 degree change on those of us who have faithfully served the public over the years. We believe that our government has a moral duty to place a higher priority on the lives and property of the motoring public than on the financial enhancement of the shipping community.

Our primary concern is that the Executive Branch seems to be running the Interstate Commerce Commission. We have seen a complete reversal in the direction of the present leadership of the Commission. The ICC originally set out to implement the national transportation policy and other provisions of the 1980 Act. It now appears that the Commission is set on a course of total deregulation.

We support and applaud Committee Chairman Howard's stated intention to insist that the ICC once again return to following Congressional direction. We do not question the motives of Senator Packwood, Secretarty Dole, and others who would totally and imemdiately deregulate the trucking.industry. However, we cannot help but feel they are mistaken in their belief that the public interest is being served by their approach.

We hope the Committee will take the necessary action to enable the entire trucking industry to regain its stability and to return to its role as a safe, dependable, and essential part of America's surface transportation system.

We welcome the opportunity to answer questions you may have on our position and on the role and the status of the owner-operators in the industry.

Mr. ANDERSON. Please proceed.

TESTIMONY OF MARK PERRY, DIRECTOR OF GOVERNMENT AFFAIRS, OWNER-OPERATORS INDEPENDENT DRIVERS ASSOCIATION OF AMERICA; MARSHALL SIEGEL, EXECUTIVE DIRECTOR, INDEPENDENT TRUCK OWNER-OPERATORS ASSOCIATION; RITA BONTZ, TRUCKERS ACTION CONFERENCE, MARYLAND INDEPENDENT TRUCKERS AND DRIVERS ASSOCIATION; AND CHARLES C. DEVAUL, EXECUTIVE SECRETARY, OWNER-OPERATORS OF AMERICA

Mr. PERRY. Thank you, Mr. Chairman.

My name is Mark Perry, I am director of Government Affairs for Owner-Operators Independent Drivers Association of America, the largest group of owner-operators in the Nation.

I am pleased that we were a part of that group which, in a letter sent to this committee over 5 months ago, called to your attention the problems that we in the motor carrier industry are having.

I am, however, at pains to recall that our group supported the Motor Carrier Act of 1980, because under it, owner-operators were protected because under its provision lumping and a mandatory contract of haul, uniform State regulations, and other issues were addressed in a rational and reasonable manner.

And, Mr. Chairman, we supported the important parts of the bill because under that bill ratemaking would still be a rational and closely-monitored process.

We supported the Motor Carrier Act of 1980 because we thought it was a big step forward for our industry and for our owner-operators; and that it contained adequate protections for owner-operators.

We saw the act as Congress' way of reaffirming the importance of the small businessman as an integral part of the motor carrier industry.

Now, 3 years and some months later, we as owner-operators are forced to admit that we were greatly mistaken.

Whatever rate stability there was in 1980 is gone. The contract of haul is a dream. And we believe it was purposely and totally ignored by the ICC after the sham of packed hearings and secret meetings.

The ICC never had any intention of providing a contract of haul and, to our mind, purposely flaunted that provision of the Motor Carrier Act.

Lumping is still an industry-wise scandal. And one Commissioner, no longer with the ICC, testified that lumping just wasn't a problem.

The common carrier obligation to serve has been studiously ignored; the Commission has set aside petitions and testimony on the problems of the industry in the name of competition and, worst yet, the American public has been treated to the unseemly sight of ICC Commissioners scrambling to be the last Chairman of the ICC.

Mr. Chairman, the ICC's lack of action in regard to the Motor Carrier Act of 1980 is in our opinion nothing less than a national scandal.

Since 1980, over 40 percent of all owner-operators have been put out of business.

Rates have fallen as carriers have entered new markets. According to our own study, the cost of operation for an average single-truck owner-operator now stands at $1.16 per mile—if that owner-operator runs 120,000 miles per year.

Rarely—if ever—has anyone in our industry seen anything near that level of compensation.

In fact, we have found that most owner-operators are now hauling commodities for compensation in the range of 80-to-90-cents per mile—if that.

It is only a matter of time before owner-operators hauling at this rate will go out of business.

We theorize that the only reason there remain any owner-operators today is because of the easy methods of entering the industry. But the turnover in the industry gives us pause; our most recent survey conducted of our membership indicates that many who have recently entered the industry will be out of business in 6 months.

In essence, what the ICC has created by its actions is a permanent class of impoverished small businessmen, a class of people who enter the industry, haul for 6 months; and leave the industry.

The impact of this is only now beginning to be felt; the expertise which characterized the owner-operator segment of the motor carrier industry is being destroyed; the public is now being served by a group of small businessmen whose permanence is questionable, whose experience is almost nonexistent, and whose abilities have not yet been proved.

It is only a matter of time before all of this catches up with our industry, before it becomes plain to everyone that the motor carrier industry is not getting the job done.

It will only be a matter of time before there are few trucks left capable of hauling the necessary commodities to our markets. We may say that there will always be people dumb enough to enter an industry at which they don't even have a prayer of making a living—but I wonder if this is really what the country wants?

The word is out: If you want to go broke, go buy a truck.

Mr. Chairman, let me be even more blunt and follow up on some of the comments made by previous witnesses.

Because owner-operators do not have the financial capabilities of earning a living, they certainly do not have the financial wherewithal to maintain the equipment they now own.

In fact, our industry may be an accident waiting to happen. In essence, the owner-operator will do anything to feed his family—as would anyone else—even if it means taking money out of his truck. The owner-operator is in essence eating next year's overhaul, because he doesn't have any choice.

The result of our present financial problems is that owner-operator equipment across this industry is deteriorating.

The ICC's penchant to count anything as an innovative price and nothing as anticompetitive has made inevitable, we believe, the passing of the owner-operator.

The level playing field concept of deregulation in other industries—the concept is used in banking deregulation, for instance—is nonexistent in ours.

The ICC seems to believe that a smaller carrier and an owner-operator will somehow survive because they will be more efficient.

It's a strange and perverse twist of logic. Everyone knows that if you enter a poker game with $5 against another player with $200 that it's only a matter of time before you lose. It doesn't matter how good you are.

Yet, lest my remarks be misinterpreted, let me add: There are large carriers in the Nation who are now facing imminent financial ruin. Even they cannot survive under the present environment. Literally dozens have already gone out of business.

While public attention is focused on two airlines which have gone belly-up, the executives in our industry sadly shake their heads, because they know what the public doesn't: That what is happening in motor carriage and the motor carrier industry makes what the airlines are going through look like good economic times.

In the end, frustration is going to set in, particularly when the economic health of our industry is measured by the stocks of the five largest trucking companies. Such a point of view can only be considered a vicious and cynical disregard of the truth.

Mr. Chairman, we at OOIDA believe that rates must be stabilized in order to retrieve the present situation.

We do not ask for a guaranteed income, or a guaranteed profit; but we do ask that somehow owner-operators be compensated at least for their cost of operation.

An owner-operator's cost must be considered in setting of rates. We have submitted a cost-of-operation petition to the ICC, as have a number of other groups, including the International Brotherhood of Teamsters. Both petitions were denied out of hand.

We would like to submit our cost-of-operation petition for your consideration for the record.

Further, Mr. Chairman, the ICC must be made to obey the law just like the rest of us.

We have nothing against innovative pricing, but we do not know what it is; no standards or limits have been set by the ICC.

In an effort to deregulate our industry, something which we believe the Congress did not intend in 1980, the ICC has allowed virtually any rate to become effective.

The ICC must be made to define its terms, to follow the provisions which this Congress set down, to tell the industry under what circumstances a rate is anticompetitive or when it is innovative and when it is not.

Mr. Chairman, that concludes my statement.

Mr. ANDERSON. Next, Mr. Siegel.

Mr. SIEGEL. Mr. Chairman, and members of the subcommittee, I want you all to know that I appreciate the opportunity to appear and testify on this matter of paramount interest to our membership.

The Independent Truck Owner-Operators Association, known as I-TOO, is a group of over 5,100 owner-operators, merchant vendors, who sell to owner-operators, finance companies who finance these owner-operators, and trucking companies that employ owner-operators.

It is an organization of, by, and for, the owner-operator.

I-TOO has members in every State of the Union, and our membership is growing rapidly. The organization is approximately 2 years old.

We represent a responsible alternative to the owner-operator, unlike those organizations that were responsible for or supported the trucking strike earlier this year. We thought it unwise at that time, and actively opposed it.

I-TOO works for the good of the owner-operator, and assists him or her in getting into business and staying in business through furnishing of operational information, general business advice, and as an information disseminator.

Up to this point we have been relatively inactive in politics, but I can assure you that we intend to make certain that our membership and their friends are aware of what the administration and others have done and are doing to and for our members and others in the trucking industry.

In my opinion the Motor Carrier Act of 1980 is a fairly decent piece of legislation that has been essentially ignored by the Interstate Commerce Commission in its headlong rush to commit institutional suicide.

As I have earlier stated on several occasions, those members of the ICC who cannot fairly read and interpret the law, which does require regulation, ought to have resigned a long time ago.

The foot-dragging that has gone on concerning appointments to the ICC underscores the inattention which has been given to transportation regulatory matters:

One nomination, that of Paul Lamboley, has been languishing almost a year. Another nomination, that of Jane Holt, has been in limbo since last April.

This is positively disgraceful.

Transportation regulation is entirely too important a factor in our society to be ignored like it has been ignored to date.

The railroads are getting away with bloody murder, and are keeping two sets of books: One in which their track structure is accounted for using the so-called betterment accounting system; and this is what is reported to the ICC under the ICC regulations.

But to their stockholders, the railroads use a depreciation system of accounting, which is called for by the Securities and Exchange Commission regulations.

A comparison of the bottom line results for a railroad could mean the difference between a $20 million loss under betterment accounting, and a $25 million profit under depreciation accounting—all for the same year.

Yet, all we hear about is how revenue inadequate the railroads are. We consider that baloney, political claptrap, and it's another clear indication of how biased the ICC is in favor of railroad and, also, I might add, against the trucking industry.

It is important to note that the major proponents of trucking deregulation—and that is what has occurred despite what the law says—are economists and those obsessed with an ideological approach, rather than a pragmatic approach, to our problems.

The one thing that economists are certainly good for is analyzing those things that have happened in the past. Well, in the case of the trucking industry, and in particular with respect to owner-operators, the things that have happened in the past since 1979 have been an unmitigated disaster.

From approximately 300,000 owner-operators in 1979, the number has decreased to approximately 100,000 today. This drop in the number of owner-operators can only be described as an unmitigated disaster.

The owner-operators have been made the economic "kulaks" of our modern day United States, and it is high time that this is realized.

As you can tell, we are not very happy with the state of affairs. And let me now discuss the issues:

The effects of the Motor Carrier Act of 1980 on the trucking industry and labor have been disastrous.

As pointed out previously, approximately two-thirds of the owner-operators have been forced out of business by the direct effects of trucking deregulation as administered by the ICC.

Owner-operators are true small business persons in the trucking industry, and we are the ones who have taken it on the chin from the free market freaks that currently seem to be in control at the ICC.

Now, let me be certain that you all understand that I don't have anything against the free market. It is a fine and wonderful institution, to the extent that it works. But what you must understand—and what I don't think some do understand—is that you cannot have a free market in goods without transportation services to get those goods to the marketplace.

Moreover, I am told by many shippers who use trucking services that a dependable, reliable, economical, and fair transportation system is what is needed for our economy to work right.

Currently, there is unfair competition in trucking going on all over the country. Desperate carriers set rates so low that they can't possibly make any money. Trucking companies using owner-operators have to compete with other trucking companies that either don't know or don't care what their true costs of operations are.

As a result, trucking companies do not pay and cannot pay owner-operators a fair amount.

The owner-operators and the trucking companies as well, are eating up their own capital resources in order to merely stay in business, in the hopes that things will get better. Responsible regulation would have prevented this.

The Interstate Commerce Commission has the authority, delegated to it by Congress in the Motor Carrier Act of 1980, to cut out the pernicious practices that have so far caused over 300 trucking companies representing over 16 percent of the industry capacity to go belly-up.

But the regulated trucking companies that have ceased doing business and gone into bankruptcy, or severely curtailed operations, are the mere tip of the iceberg—when you consider the 200,000 owner-operators that have been forced out of business.

Moreover, the ICC has curtailed the filing of annual reports by class III for small motor carriers, and has destroyed the data base necessary to evaluate the ICC's own actions.

In my opinion the effect on consumers of all of the rate cutting that has gone on has been negligible; your large companies have simply retained in their own bottom line whatever they could in transportation costs saved. The administration of the Motor Carrier Act of 1980 thus far has resulted in tremendous reallocations of capital resources and profits in our society, to the extreme detriment of the trucking industry, including owner-operators and its labor.

There have been negligible benefits passed on to consumers, in my opinion; particularly by large companies which belong to the National Association of Manufacturers, such as Lever Brothers, Inc.

Many shippers, particularly those of less-than-truckload freight, have thrown up their hands in disgust at the way the ICC is working these days, and in frustration have called for elimination of all antitrust immunity for motor carrier rate bureaus.

Indeed, many people think that what we have now is worse than nothing at all, so why not get rid of it?

But that begs the issue. The problem is not the Motor Carrier Act of 1980, or the Interstate Commerce Commission. The problem is the Interstate Commerce Commission Commissioners.

The question of the impact of the Motor Carrier Act of 1980 on independent owner-operators has been asked of me by the Secretary of Transportation. And I replied to her in a letter dated May 3, 1983, a copy of which I have attached as appendix A. Things have not improved since then.

The overcapacity in the trucking industry has been rampant. This has been accentuated by policies of this administration and the ICC clearly designed to increase the railroad share of the intercity freight market.

How, in the name of common decency, can those who are performing this conscious market reallocation speak in terms of letting the free market reign?

Such hypocrisy may be an everyday affair here in Washington, but to those of us in the hinterlands it is totally unacceptable.

Most of the comments that I referred to earlier concern the truckload freight portion of the trucking industry. The situation is quite different in the LTL field.

Of course, in the small package field, United Parcel Service has a monopoly, save for that competition generated by the U.S. Postal Service and some miscellaneous small carriers. This is because the cost of instituting an areawide or nationwide service for the fast transportation of small packages is exceedingly high. Concentration in this segment of the industry has increased to the point where there is essentially one nationwide nongovernmental carrier.

With respect to the less-than-truckload carriers, and those are other than those carrying small packages in the country, it is quite clear that the concentration is increasing dramatically—from 30 percent to 50 percent since 1980 for the largest carriers' market share, as the medium-sized carriers are forced out of business through the destructive practices engaged in by large carriers through the use of discounting tactics.

A loss leader may be fine for a supermarket, but when applied in the trucking industry, it can drive companies out of business and has done so.

Yet, our old standby, the ICC, doesn't want to take the trouble to really get into the situation.

In Ex part No. MC-166, in a report served appropriately enough on September 13, 1983, the ICC has again refused to establish standards for review of discounting and innovative pricing techniques.

This is just another example of where the ICC has refused to regulate rates which it has been so charged by law with doing.

It has been said by academicians of some note that within the next few years, there will be four or five giant nationwide LTL carriers, approximately 20 medium-sized regional LTL carriers—and that will be about it.

Already the trend of bankruptcies involving medium-sized LTL carriers foreshadows the final playing-out of this trend. When the sixth-largest carrier in the country—Spector-Red Ball—goes bankrupt, shouldn't that tell you a little something?

In the truckload freight business there are some very large carriers, with the medium-sized carriers being weeded out; and a large number of small carriers springing up. Conditions are chaotic because of the lack of entry control, particularly as it relates to fitness as well as to the need for new service. Overcapacity has been endemic, although it didn't have to be if the ICC had acted properly in controlling entry.

Very few would return to the days of 1976 in terms of rolling back the deregulation clock. However, if reform is a code word for further deregulation, then, certainly, further reform is not needed.

If, on the other hand, reform may be used in its true meaning, then, yes, indeed, there is need for reform as soon as possible to reestablish stability in the trucking industry.

We propose that the issue of regulation be addressed pragmatically. There is no simple answer. We must find a position somewhere between total regulation and total deregulation, and then a reinvigorated ICC should proceed to get off their backsides and go to work, instead of pontificating about how marvelous it is that regulation really isn't needed.

Reform of the trucking industry can best be occasioned by reform of the Interstate Commerce Commission, and the way the Commissioners are appointed:

As I mentioned earlier in this statement, I suggested in my comments on S. 48 a better way for the appointment of the ICC Commissioners.

Attached as appendix B is a copy of my letter to Senator Packwood transmitting the comments, which are themselves attached as appendix C. Appendixes B and C were also sent to all members of the Senate Commerce Committee and other key Members of Congress.

Such an approach would be analogous to a judicial nominating committee approach. It would eliminate the delays in appointment of Commissioners, such as have occurred in the last three administrations.

There must be tightening of entry controls to make the trucking business one which is reasonably stable, reasonably profitable, but not impossible to get into.

Economic regulation is a necessity. The present statute in the hands of a fairminded Commission would do the job nicely.

Rates must be regulated, both on the downside as well as the upside. You cannot have a boom-and-bust cycle in trucking and expect to have a trucking system capable of meeting the needs of commerce as well as of national defense.

Yet, in my opinion, this is exactly what has happened and what will happen again if responsible entry control and rate regulation are not implemented.

Moreover, there must be a fair and impartial arbiter between shippers and carriers; if not the ICC, then it must be the courts.

But it makes little sense to burden an already overburdened court system with additional work, when a perfectly good mechanism continues to exist for handling the problems.

The mechanism will work, however, only if its operators, the Interstate Commerce Commissioners, will get back into the business that they were commissioned to be in.

The Congress should give more specific instruction to the ICC concerning regulation of entry control and rate regulations.

Since the Motor Carrier Act of 1980 became law, not a single protestant to the granting of new operating authority has carried its burden of proof. Such a situation is ludicrous and exhibits a basic dishonesty in approach to administering the act.

The Motor Carrier Act of 1980 was passed with the support of the motor carrier industry because it was thought that the ICC had to be statutorily directed away from the path of deregulation it was following.

Rather than accepting the mandate of an amended national transportation policy, the Commission instead has elected to sacrifice the motor carrier industry—and particularly owner-operators—on the altar of the free market and the god of competition.

I respectfully submit to you that this was not the intended purpose of the Motor Carrier Act of 1980, and had it been perceived as such, then many of those who supported it and voted for it would not have done so.

The Commission is no longer interested in the financial or operational fitness of applicants, with the results that companies having no ability to financially support decent safety programs are granted authority right-and-left—no financial data of any kind is required any longer in order to prove a company's fitness.

Instead, the Commission takes the approach that the marketplace is the best selector of the fit. The Commission is leading us in the direction of a demolition derby which was never the intent of Congress.

Enforcement has been almost totally lacking. Illegal truck operators run rampant without challenge. Rates are being charged that are not now and never have been on file with the Commission. Shippers seek and receive rebates.

These are clearly criminal acts. And what do the present-day ICC Commissioners do about all this?

Well, I would comment your attention to the transcript of the Commission's closed conference on enforcement matters last fall.

The aroma that arises from that document is execrable. Nobody wants to enforce the law.

One Commissioner says that bribes are OK. Another Commissioner says that he doesn't propose to put up with gumshoe tactics by the enforcement staff.

If it were not so expensive, I would have attached a copy of the transcript to this statement. I truly think that each member of this committee should read that transcript and judge for himself just what kind of enforcement effort can be expected from this group of Commissioners?

In fact, Mr. Chairman, it is our recommendation that when you have the Interstate Commerce Commissioners in here next month, that all four sitting Commissioners be subpenaed if they don't voluntarily show up.

Deregulation has not worked. It has caused problems in the airline industry, in the motor carrier industry, and in the railroad industry.

You have a runaway Interstate Commerce Commission on your hands.

When two-thirds of the Senate as well as a sizeable number of members in the House of Representatives, tell the Commission that it is unhappy with its actions in the rail boxcar case, and the Commission, in effect, thumbs its nose at this Congress by refusing to even hold further hearings, then does anyone really have to tell you more than that something is wrong?

Are you going to do something about it? Or are you just going to go along and do business as usual?

The one thing I can assure you is this: your failure to act to restore sanity to the way the Interstate Commerce Commission operates will force us into the political arena to seek redress.

The situation is dangerous. We are in the 11 hour.

In the name of fairness and justice we beseech you for help.

I-TOO believe in the dignity of work and in the opportunity for every man and woman to earn a decent living. That decent living is presently beyond the reach of the owner-operators of this country because of what the Interstate Commerce Commission has done to us.

Thank you, Mr. Chairman.

Mr. ANDERSON. Well, thank you, Mr. Siegel.

Our next witness is Rita Bontz, Truckers Action Conference.

Ms. Bontz.

Ms. BONTZ. Thank you, Mr. Chairman.

I would like to make a couple of points and I will make my statement as abbreviated as possible.

Thank you for the opportunity to be here today.

I am here as a truck owner-operator. I'm also here to present the views of the Truckers Action Conference, the Maryland Independent Truckers and Drivers Association, and Forward America.

We believe that Congress intended to guarantee the continuation of a safe, dependable and efficient truck transportation system when it passed the Motor Carrier Act of 1980.

It was carrying out a mandate set forth by the framers of our Constitution who saw interstate commerce as a potential problem area requiring continual congressional guidance and regulation. It is clear that our forefathers thought that the public interest could best be served by reserving this important power to the Federal body.

Public interest is still a matter of prime concern.

But who is the public? And are they being served properly?

The Motor Carrier Act of 1980 was to benefit all of us. It was to encourage competition, lower consumer prices, and to remove burdensome Federal regulations.

But consumers are not paying less, and most owner-operators, and all but a handful of trucking companies, are fighting a battle for survival.

Freight rates are at an all-time low, and operating expenses are at an all-time high.

Which public is being served? It appears the best-served is the shipping community.

It is obvious that the dollars taken from the trucking industry are being traded to shippers' profits. Consumers do not appear to be receiving a corresponding pass-through.

And all the while, public safety is being undermined. We can no longer accept without question the ability of drivers or the condition of the equipment they drive.

Many drivers are underqualified, many are impaired by drugs, alcohol, fatigue, and especially by a bad attitude.

In many cases this type of person is on the road because the pay is so low that higher quality drivers will not accept these jobs. The only reason that inferior drivers can find jobs is because the rate wars brought on by the way in which the Motor Carrier Act has been implemented.

In our opinion those who advocate the immediate and total deregulation of trucking are making a serious mistake. Trucking should not be treated in the same manner as other industry. Trucking is unique.

Truck are in constant contact with smaller, more vulnerable, vehicles and their occupants. People who share the road with trucks have the right to expect those machines and their drivers to be top quality.

Those of us who are responsible for those trucks—we in industry and you in Government—have a solemn obligation to see that they are as safe as is humanly possible. There is no room for mediocrity where human lives are concerned.

The reason that public safety is being endangered is that the trucking industry must find as many ways as possible to survive. And there are few options: Cut drivers' wages, reduce maintenance to minimal levels, and postpone equipment replacement.

These are dangerous places to scrimp, but they have become almost universal practices.

The productivity of each truck unit is finite. Each unit must generate a certain revenue per mile or per hour in order to cover its operating costs. This elementary fact seems to have been misplaced in the furor over price competition.

The ICC has data on the minimum revenue requirement. And it is the ICC's responsibility to insure public safety and dependable service by insisting that all carriers charge realistic rates as a minimum.

We don't expect the ICC to guarantee us a profit. We are not asking for a subsidy.

Given a fighting chance, we'll see to our own survival. What we do expect is that the Commission help us to make the difficult transition from total regulation to the free market by providing guidance and leadership to minimize the impact of the 180-degree change on those of us who have faithfully served the public over the years:

We believe that our Government has a moral duty to place a higher priority on the lives and property of the motoring public than on the financial enhancement of the shipping community.

Our primary concern is that the executive branch seems to be running the ICC. We have seen a complete reversal in the direction of the present leadership of the Commission. The ICC originally set out to implement the national transportation policy and other provisions of the 1980 act. It now appears that the Commission is set on a course of total deregulation.

And isn't it ironic, that just as the Federal Government is deregulating, the States are imposing taxes and regulations on us that are tripling.

We support and applaud committee Chairman Howard's stated intention to insist that the ICC once again return to following congressional direction.

We do not question the motives of Senator Packwood, Secretary Dole, and others, who would totally and immediately deregulate the trucking industry. However, we can't help but feel that they are mistaken in their belief that the public interest is being served by their approach.

We hope that you will take the necessary action to enable the trucking industry to regain its stability and to return to its role as a safe, dependable, and essential part of America's surface transportation system.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Ms. Bontz.

Our next witness is Charles C. DeVaul, executive secretary, Owner-Operators of America.

Mr. DeVaul. Thank you.

I am a former professional truck driver and currently executive secretary of the Owner-Operators of America; we are a trade association serving self-employed truckers.

Our association was established during the shut-down of February of this year in response to the violence caused by the shutdown which we neither endorsed nor encouraged.

We are dedicated to a peaceful, cooperative, solution to these problems; and we believe that we speak on behalf of approximately 100,000 self-employed truckers nationwide, and their families.

In pursuit of a cooperative course of action, I have met with several legislative aides here in Washington. And I discovered that 50 percent of those legislative aides who deal with transportation issues did not know the difference between an owner-operator and a common or contract carrier.

New legislation which may favor a common or contract carrier may have an adverse effect on self-employed owner-operators; and, therefore, it is, of course, very important that all Congressmen and their aides be aware of the distinction.

The common or contract carrier is usually a large company employing dozens or often hundreds of people. An owner-operator is one self-employed person with his own truck which he generally leases to a common or contract carrier.

If 50-percent of the Congressmen who voted on the Surface Transportation Assistance Act of 1982 were not aware of this distinction, it is little wonder that over 150,000 self-employed owner-operators are now suffering from the adverse effects of this legislation.

A specific case in point is the legislation allowing longer and heavier vehicles:

Common and contract carriers will benefit from this legislation. Owner-operators are hurt by these regulations because they are now required by the carriers to haul heavier payloads, thereby using greater amounts of diesel fuel and also sustaining considerably more wear-and-tear on their equipment, for the same amount of compensation as they were previously paid.

This additional expense cuts deeply into an already extremely marginal profit.

Second, self-employed truckers who own their own trailers are not in a financial position to trade their trailers for larger ones in order to compete with the longer and wider trailers available to the large companies.

We respectfully request the assistance of this committee in making all Congressmen aware of the importance of the distinction between common and contract carriers and self-employed truckers.

We are ready to be of assistance in this matter.

A third important factor which Congressmen who vote on transportation issues must be made aware of is the fact that self-employed truckers have very little control over the rates which they are paid for their services.

Generally speaking, the rates are controlled by the carriers. The only control the self-employed owner-operator has over the rates is to accept or refuse a load.

And we ask that a Congressman should consider this factor when he votes on legislation which will increase the operating cost of the self-employed trucker.

Without sufficient time to find ways of adjusting to the increased cost of operation, the self-employed trucker could easily be forced out of the business. This is currently happening in thousands of cases as a result of the 0.5-cent-a-gallon fuel tax increase.

Another issue of serious consequence to self-employed owner-operators is the problem caused by thousands of Canadian truckers crossing the border daily and taking loads away from American owner-operators. Due to the currency exchange difference, the Canadian carriers are easily able to underbid the American self-employed truckers. This happens with hundreds, if not thousands, of loads on a daily basis. And it has been very detrimental to self-employed truckers nationwide, not just in the border cities.

On any given day of the week there are only *X*-number of loads for *X*-numbers of trucks. And given the state of the economy here in the early eighties, there have been far more trucks available than there are loads.

As a result of deregulation thousands of Canadian trucks have been added to the number of available, while the number of loads has not increased.

And, as a result, we are subsidizing the Canadian economy at tremendous detriment to the livelihood of our own self-employed truckers.

We respectfully request that Congress address this issue and provide legislation which would correct this inequity. One solution would be to ban Canadian carriers from American freight. A second possibility would be to disallow Canadian carriers from transporting back-hauls. And a third, less helpful solution would be to pay Canadian carriers at Canadian currency rates.

There are national defense considerations relative to self-employed truckers which Congress should be aware of. Our Nation is extremely dependent on the transportation of food products by truck.

The majority of these products are transported by self-employed owner-operators. If the owner-operators are gradually phased out of business and they are being phased out of business, most of these products will eventually be transported by the large trucking companies, usually employing union drivers.

Approximately 90 percent of the union drivers operate a different vehicle for each trip. They do not carry tools or parts and in most cases are not familiar with the intricate mechanical functions of the vehicle.

Should a breakdown occur, in probably 90 percent of the cases, they must rely on the services of professional mechanics who may be 20 to 100 miles and several hours away.

Conversely, owner-operators carry their own tools and often spare parts on their truck, and they are generally very knowledgeable in the operation and repair of the truck and trailer.

In the majority of cases, they can make repairs on the spot and keep the load moving to its destination.

In the event of a national emergency, this could be an extremely important factor, and deserves considerable merit from this committee and from people responsible for national security and defense.

We are all aware that a Nation with a disrupted food supply would be an easier prey for an enemy. This factor alone is reason enough for this committee to give considerable recognition to the unique needs of self-employed truckers.

To place owner-operators on an economically viable base we need:

One, a reduction of taxes—the highway use tax, equipment taxes, excise taxes on tires.

Two, we need more effective policing by the Interstate Commerce Commission.

Three, we need a rationalization of the maze of Federal and State taxes and regulations affecting interstate commerce.

Four, the creation of a tax structure which encourages the individual initiative represented by the self-employed trucker.

To remedy these ills we propose the following:

More recognition in law of the special status of self-employed owner-operators;

Enforcement of these laws; and,

Protection for self-employed truckers who seek enforcement of current legislation.

Mr. ANDERSON. Thank you.

We have a few questions:

Mr. Perry, would you please compare how the owner-operator in the exempt transportation section are doing in relation to those who are operating pursuant to the leases with regulated carriers?

Mr. PERRY. Mr. Chairman, I think 12 months ago I would have answered "much worse."

I would have answered that people, truckers in the exempt area, were doing much worse than in the regulated area.

I don't think I'm in the position today to make that claim.

The reason I would have answered that way 12 months ago is because I thought at the time that there was at least a semblance of rate stability in the owner-operator population, at least the regulated carriers.

But today with the fact that so many carriers have gone under, and that rates have been cut, and cut appreciably, I would say that in both areas business failures have been reaching critical proportions.

I think that in the exempt area it might be a little bit more critical in the future, because they are really dependent on commodities, the price of which, the transportation cost of which, change almost hourly.

Mr. ANDERSON. You heard earlier one of the panelists say how good one of the sectors was doing, and I was wondering, are there any segments of the owner-operators in exempt transportation that are doing good? Are they all in bad financial strait? Or are there some that are making like one of the previous witnesses indicated?

Mr. PERRY. Well, the exempt sector of the owner-operator industry is really a different breed of animal than any other segment of the owner-operator industry.

Many of our members who are exempt carriers are exempt carriers only for 5 or 6 months at a time, and then are in other industries; they are not basically in agriculture themselves.

So it is very difficult to assess whether they are doing any better or any worse.

I think at certain times of the year exempt—some exempt truckers—do fairly well. But whether or not that kind of revenue over a full year can benefit them is somewhat in doubt.

Mr. ANDERSON. Ms. Bontz, would you give us some examples of the current rate discounting practices that affect the owner-operator?

Ms. BONTZ. Would you like examples of actual rates and how over the—I have some that I did not bring with me. But I have a study that we have made—members of our association in Maryland have made—showing predominantly hauling between Baltimore and Chicago, and to New England.

Mr. ANDERSON. I thought you might have some examples that we could hear.

Ms. BONTZ. I am sorry that I didn't bring them, but some of the rates have dropped tremendously; and I've done the study since 1980, so it would show since the act was passed.

And I am really embarrassed that I didn't bring them with me.

Mr. ANDERSON. Mr. DeVaul, one of the changes requested by you is the rationalization of Federal and State taxes and regulations affecting interstate commerce.

Would you give us some examples of State taxes and regulations that could create problems for you?

Mr. DEVAUL. Every single one of them, sir.

Truckers today almost have to have their own legal counsel to figure out the legalities of crossing this country with a truck. And it's getting worse by the day, sir.

It is just absolutely ridiculous.

Mr. ANDERSON. I think you were also the one that mentioned when you talked to some of the staff they were not aware of some of the technical differences; and that you thought it was our job or Congress' job to educate each other.

We try to do that the best we can. But things are tremendously complicated around here in every instance. So we have to expect that you people who represent the owner-operators, the independent truck owners, the truck drivers, the Council—all of these—we hope that you people through your membership talk to your Congressmen in different parts of the country and try to educate them a little bit to some of the problems.

Because we cannot. There's no way we can get every Member of Congress an education in every phase of everything that is discussed in this House.

Mr. DEVAUL. Yes, my apologies for conveying that. I didn't mean to imply that. And I keep telling our membership the same thing that you are saying: It is our responsibility to come to you.

But we did feel that was a very important point. Perhaps I didn't quite point it up as diplomatically as I will try to in the future if something like that comes up.

Mr. ANDERSON. That's quite all right, Mr. DeVaul.

Mr. SMITH. The chairman and I consider ourselves in the other 50 percent. [Laughter.]

Mr. SMITH. Mr. Perry, I think in your statement you mention that the ICC Commissioners have favored railroads over truckers.

And, Mr. Siegel, I think you mentioned that the law was not the problem; replacement of the ICC Commissioners was the problem.

And I know you mentioned the entry question and the evidentiary need issue.

But to both of you, since, obviously, the Commissioners are going to be here on November 16, and we are going to have a chance to question them directly, have you accumulated specific kinds of documented evidence where the ICC favors railroads over truckers and why the ICC Commissioners ought to be replaced.

Mr. Siegel?

Mr. SIEGEL. Yes, sir, I have that. May I forward that to you so you can have it?

Mr. SMITH. Yes, please. I don't need it in book-form. I need it in something that I——

Mr. SIEGEL. They are a book all by themselves, anyway.

Mr. SMITH. That's what I thought.

Mr. SIEGEL. Congressman Smith, I never made the claim in my testimony, although I might believe it intuitively.

Mr. SMITH. Say it if you believe it. It's all right with me.

Mr. SIEGEL. That the railroads are hurting trucking.

Mr. SMITH. I thought you said they are, the ICC decisions favored railroads over truckers.

Mr. PERRY. No, sir.

Mr. SIEGEL. I said it.

Mr. SMITH. Oh.

Mr. PERRY. I am much more concerned with what trucking is going to do than with what the railroad is going to do.

Sometimes we in trucking, to be quite blunt, are our own worst enemies; and we have actions that occurred in February and the railroads are going to pick up some freight. And I think it is perfectly understandable for them to do so.

The fact, however, that the Department of Transportation has an administration which deals with railroad problems, but does not have a similar administration to deal with problems in the trucking industry might lead some of our members to believe—and for me to believe—that, in fact, the Federal Government in some instances is weighted in the favor of the railroad.

Mr. SMITH. All right.

So then I ask you, if you would do so, if you have specific evidence of decisions made by this ICC Commission and these Commissioners, I would like to have that, personally.

Mr. PERRY. I would be happy to provide it, Congressman.

Mr. SMITH. And I would say again, please, bring it down to some area of reason about volume, so we can get to the real issue.

And, Mr. Chairman, I invite those who have testified previously and those who may testify, to provide that same kind of information; so when the Commissioners are here before us we can question them on these particular issues.

Mr. ANDERSON. Further questions?

[No response.]

Mr. ANDERSON. Well, thank you very much, Ms. Bontz, Mr. Siegel, Mr. Perry, and Mr. DeVaul, for your presentation.

[Subsequent to the hearing, the following was received from Mr. Siegel:]

INDEPENDENT TRUCK OWNER-OPERATORS ASSOCIATION,
Canton, Mass., November 11, 1983.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Surface Transportation, House Public Works and Transportation Committee, House Office Building, Washington, D.C.

DEAR MR. ANDERSON: When I testified before your subcommittee on October 25, 1983, Mr. Bob Smith of Oregon requested that I give you further information concerning the Interstate Commerce Commission's bias in favor of railroads and against trucking companies.

A look at the track record of the Commission since approximately April, 1977, shows that nearly all major requests for action favorable to the railroads have been granted by the Commission. Substantially all such requests for favorable action by the motor carrier industry and those associated with it have been denied.

The Interstate Commerce Commission has allowed the railroads to adopt and continue to use accounting standards which artificially depress railroad earnings. Although the Commission itself recognizes that the so-called betterment system of accounting for track structure has this net effect, it has refused to prescribe the use of generally accepted depreciation accounting for railroad abandonments. This is why the Commission has uniformly found railroads to be revenue inadequate, at the same time that press reports indicate enormous amounts of cash in railroad coffers. The difference in accounting standards produces truly enormous differences. By way of illustration, one of the weaker railroads allegedly is the Illinois Central Gulf Railroad Company (ICG). In 1979, ICG reported to the Commission under betterment accounting standards that it had a loss of $32.1 million. For the same year, it reported to its stockholders, pursuant to generally accepted accounting standards approved by the Securities and Exchange Commission, that it had a profit of $24.1 million. Attached is a copy of an extract from the ICG's 1979 annual report, confirming this.

Rail abandonment regulations issued by the Commission have been administered in such a way that almost any abandonment is granted. In fact, less than one percent of all abandonment applications have been denied by the Commission, although a number of cases that were appealed to court were reversed and remanded. The Commission ought to be able to furnish the exact statistics regarding this situation. This also is another indication that the Commission is not doing its job of balancing private interests against the public interest.

Substantially all requests for use of its exemption authority by the Commission in favor of the railroads, pursuant to 49 U.S.C. § 10505, have been granted.

The Commission has ignored the so called "special circumstances doctrine" in connection with a rail carrier obtaining motor carrier operating authority. Moreover, the more stringent statutory test that must be applied to a rail carrier's acquisition of a motor carrier has been administratively watered down to the point where it is almost non-existent. By discrete "tying" of rail-motor service, a railroad can divert traffic of large shippers to its trucking subsidiary through subtle suggestions of poor rail service unless it also get the truck freight.

It is instructive to consider exactly what the Commission has done in connection with motor carrier financial matters. It has destroyed the data base which would have shown the monstrous results of the Commission's administrative deregulation of the industry. It is scandalous but true that there is no data regularly collected by the Commission pertaining to the financial condition of Class III motor carriers of property. It is in this segment of the industry that much of the turmoil and chaos has taken place and is continuing. The Commission instead collects data on Class I and Class II motor carriers of property; these carriers have revenues in excess of 1.2 million dollars per year. Moreover, although the Commission allegedly has a program to upgrade Class III carriers to Class I or Class II for accounting purposes as revenues increase, it is my understanding that the form which was to be used for reclassification was never approved by OMB, and therefore no such form has been used in quite some time. Thus, it can be seen that the Commission is definitely favoring rail carriers over motor carriers in the very basic matter of data gathering for purposes of analyzing the financial health of each industry. If this does not violate the National Transportation Policy, I don't know of anything that does.

The matter of secret rates is of concern not only to shippers, but also to owner-operators. Railroad secret rates are of particular importance to owner-operators because of the impact on the ability of motor carriers to compete for rail traffic. Rail contract rates are almost totally unavailable to the public. Now, motor carrier contract rates are similarly unavailable. Thus, an owner-operator now has no idea of what the actual rate is on contract carrier movements handled by an owner-operator. Moreover, manufacturers located at rural points can no longer see if they are being treated fairly by carriers that serve their facilities as well as urban facilities. This works to the benefit of the railroad industry because of the natural monopoly which railroads have over large areas that they serve. On the other hand, motor carriers are faced with cutthroat competition from others who do not appreciate their true costs of operations, thereby creating instability in the smaller and presently unmonitored segment of the motor carrier industry.

The foregoing is merely illustrative of some of the major policy areas in which the Commission has favored the rail industry over the trucking industry. It has been said that the Interstate Commerce Commission is a wholly owned subsidiary of the Association of American Railroads. This could be further redefined: The Interstate Commerce Commission appears to be a wholly owned subsidiary of the Class I American Railroads.

As I indicated to you in my earlier testimony, the problems faced by the public and by the various segments of the transportation industry relate to the current makeup of the Interstate Commerce Commission, rather than a basic structural deficiency. As has been seen with the Civil Rights Commission problems, when one President is allowed to pack a commission, the public interest suffers, regardless of who is President. Every appointee on the Interstate Commerce Commission today was appointed by President Reagan. There are no Democrats on the Commission. There are three vacancies. I respectfully submit to you that one remedy would be merit appointment of ICC commissioners, which can be accomplished by using a nominating commission process. Furthermore, once this is accomplished, the power of the President to appoint the Chairman of the Commission ought to be removed. The Chairman of the Commission ought to be elected by the commisioners from their number. Prior to implementation of Reorganization Act No. 1 of 1969 by President Nixon, this is exactly how the Chairman was chosen. We must have a government of laws, and not of men (or women). Tragically, that is not the case with transportation regulation today.

Sincerely,

MARSHALL SIEGAL.

Enclosure.

[IC Industries 1979 Annual Report, Pages 24 and 25]

NOTE 14: INTERSTATE COMMERCE COMMISSION ACCOUNTING BASIS

The ICG Railroad and subsidiaries are required to report to the Interstate Commerce Commission (ICC) on an accounting basis which does not conform in all respects with the generally accepted accounting principles used by the Company. The following data is a reconciliation of the Railroad Activities' pre-tax results for 1979 and 1978 as shown in the Consolidated Statement of Income to the net income of the ICG as reported to the ICC.

[In millions]

	1979	1978
Pretax income of railroad activities	$24.2	$26.0
Less: C&IW Railroad	.1	.1
Pretax Railroad income to ICG	24.1	25.9
Income on intercompany read estate sales	18.4	7.0
Capitalization of tie leases	.8	.8
Capitalized interest	(1.9)	–
Betterment instead of depreciation accounting for track structure assets(*)	(72.4)	(32.8)
Merger reserve revisions	(1.1)	(1.1)

	1979	1978
Other	(.6)	-
Pretax income (loss) of ICG basis	(32.7)	(0.2)
Provision for taxes on ICC basis	(.6)	1.8
Net income (loss) of ICG on an ICC basis	(32.1)	(2.0)

The pretax income of the Railroad Activities includes $13.0 million and $24.7 million for 1979 and 1978, respectively, attributable to real estate income. In addition, the 1979 pretax income includes $5.2 million resulting from the settlement of a claim against a supplier and other miscellaneous non-recurring items.

Mr. ANDERSON. Our next panel is the National Small Shipments Traffic Conference and the Drug and Toilet Preparation Traffic Conference, Larry W. Smith, manager of traffic at the Upjohn Co.; the National Association of Manufacturers, Mr. Richard A. Warren. Mr. Warren had to leave so Mr. Hugh S. Brady, director, will be testifying.

And then Mr. Edler, chairman of the motor rates and practices of the National Industrial Transportation League.

We have the prepared statements here. We will make those a matter of record at this point.

[Statements referred to follow:]

OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980

My name is Larry Smith and I am an officer of the National Small Shipments Traffic Conference (NASSTRAC) and of the Drug and Toilet Preparation Traffic Conference (D&TPTC). My office address is 701 East Milham Road, Kalamazoo, MI 49001.

Representatives of NASSTRAC and D&TPTC testified at the hearings which led to the passage of the Motor Carrier Act of 1980, which I will refer to as the "Act", and at the subsequent oversight hearings concerning the implementation of the Act. On behalf of the members of these shipper groups, over 300 companies and industry associations shipping a large volume of LTL shipments throughout the nation at rates regulated by the Interstate Commerce Commission, we appreciate this opportunity to express our views. As will be discussed, the Commission is not implementing the statute but is "regulating" as if it were free to ignore the statute.

RATE REGULATION—A FAILURE TO FOLLOW CONGRESSIONAL INTENT

The clearest example of the Commission not following the dictates of Congress in the Act has been in the area of regulating motor carriers' rates. Congress did not change the basic standards of legality for motor rates or the Commission's responsibility to review rate changes for conformity to the Act. Rather, Congress made it clear that rates must still meet the standard of being reasonable. Today, the Commission refuses to acknowledge that rate increases can be unreasonably high in today's climate.

During the past two years, the Commission has approved in toto every general rate increase by the rate bureaus, regardless of how inequitable. In that period, there have been rate increases on small shipments of over 30 percent, a rate which is triple the rate of inflation. On March 25, 1983, the Commission refused to suspend or investigate general rate increases by nine major rate bureaus of $800,000,000 per year. The Commission evidently does not believe that any rate increase can be unreasonably high, as it places its faith in the "free market".

The burden of the great bulk of these increases fell upon small shipments. While small shipments are made by both large and small companies, the small companies are usually exclusively shippers of small shipments.

As noted, the general freight rate increases proposed by the rate bureaus for April 1, 1983, continued a pattern of increasing the relative burdens of shippers of small shipments. That is, every bureau proposed an increase on small shipments that was greater than the increase proposed for truckload shipments. And these proposals were made in spite of the fact that the expense increases claimed by the bureaus were no greater for small shipments than they were for large shipments. Many of the bureaus "justifications" for these increases admitted that the profitability of small shipments traffic was already far higher than the profitability of truckload traffic.

At least the majority, if not all, of today's sitting Commissioners can be described as "deregulators." Undoubtedly, they believe in the free market and that there is no need for them to regulate rates. Apart from that fact that this is a decision for the Congress and not the Commissioners to make, the fact is that there contunues to be an urgent reason to scrutinize and regulate general rate increases. The reason can be expressed in two words: rate bureaus.

LTL freight is not as competitive pricewise as TL freight. The most basic consideration is that a shipper cannot usually afford to undertake LTL deliveries economically by its own private carriage, as it can do with truckload traffic which moves from one origin to a single destination intact. Beyond that, new entrants into the motor carrier field tend to be truckload-oriented, as there is a large capital requirement for establishing break bulk terminals; and new entrants typically do not have that kind of funding.

As a practical matter, rate bureau meetings of territorial groups of carriers are collectively setting the general rate increases on LTL freight. Faced with dwindling TL volume and an increase in TL competitors, they consistently have been opting for the traditional rule of monopoly pricing: charge as much as you please on the capitive (LTL) market.

Though the carriers motivation and incentive are clear, it is not at all clear why the Commission has abandonded its statutory duty to regulate maximum rate increases under the present circumstances. While Congress thought that it was creating a better world for shippers by the Motor Carrier Act of 1980, the practical result, due to Commission inaction, has been the worst of all worlds for the LTL shippers: the carriers can collectively set rate increases and the Commission disclaims responsibility for examining their reasonableness.

During 1982 and in 1983 to date, the Commission's disregard of its statutory function to regulate rate increases was so complete that it did not suspend any general rate increases. Indeed, the Commission has reduced its staff of advisors on rate increases from 34 to only 7, eliminating 80 percent of the staff needed to do an effective job.

Only recently the majority of the Commission publicly verified its complete indisposition to perform its statutory responsibility to regulate rate increases. The Commission has two basic options to establish standards for reasonable rates, either on a case-by-case basis or in a general rulemaking proceeding. Since it has initiated no rate investigations during the last two years, the Commission has no pending rate investigations initiated under the reign of the present majority. What it has had on its docket for decision are: (1) several April, 1978 general increases still under investigation (I&S Docket Nos. 29772, *et al., General Increase, SMCRC, April 1978*) and (2) a rulemaking, *Ex Parte No. MC-128, Revenue Need, Standards in Motor Carrier General Increase Proceedings.*

The latter proceeding, a rulemaking, was instituted in 1979 as an aid to the final decisions in *SMCRC, et al.,* immediately after it had issued a decision in *SMCRC* requiring a roll-back of that general increase. The finality of the *SMCRC* decision was stayed pending a decision in *Ex Parte MC-128* in order to reconsider *SMCRC* in that light.

Thus, the Commission had pending for several years both a rulemaking and a rate investigation proceeding, either of which was an appropriate vehicle to inform the carriers and the public of standards for reasonable rate increases. What did this Commission do with those proceedings? On July 28, 1983, it issued a brief decision by majority vote, with Chairman Taylor dissenting, dismissing both the *Ex Parte MC-128* rulemaking and the entire group of *SMCRC, et al.* pending rate investigations.

No more complete abdication of its rulemaking functions could be imagined. The Commission has told the world that it is not interested in reviewing rate increases and that it will not issue any standards as to what is a reasonable rate.

Shippers look to this Committee to admonish the Commission in clear terms that Congress has not abolished rate regulation and that the Commission must discharge its responsibility to administer that Act.

LIABILITY FOR FREIGHT DAMAGE

I would also like to point out another area in which the ICC's disregard for the statute negatively affects shippers, *viz,* liability for loss or damage to freight.

On its own, the Commission has rewritten the loss and damage statute for freight forwarders and household goods carriers by allowing them to self-limit the amount of their liability without the statutorily required showing that the "value would be reasonable under the circumstances". In its decision in the *Transconex* case, No. FF-305, the Commission has ruled that such carriers will be allowed to limit their liability to a specified value simply because it gives shippers an additional "option", regardless of whether the value limit is unreasonably low. It is clearly contrary to Congressional policy to thus relieve such carriers from responsibility for their own negligence.

More recently, in a ruling involving bus transportation of freight, the Commission has approved a "released value" of zero liability for the members of a rate bureau. While zero liability is directly incompatible with the limited "value" authorized by the statute, the Commission's approval of those collectively set rates is incomprehensible as it was approved because they were found to be carriers of passengers and not carriers of property.

TESTIMONY OF RICHARD A. WARREN, CHAIRMAN, TRANSPORTATION SUBCOMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman and distinguished members of the House Surface Transportation Subcommittee

My name is Richard A. Warren, and I am chariman of the National Association of Manufacturer's Transportation Subcommittee, a member of the Motor Carrier Ratemaking Study Commission, and general manager of the Distribution Division of Lever Brothers Company. I am testifying today on behalf of the NAM on the impact of the Motor Carrier Act of 1980.

Because the NAM strongly supported passage of the Act, and has a long-standing commitment to promoting competition in the marketplace, the Association has a continuing interest in truck deregulation and is supportive of most of the results of the 1980 Act.

In general, the trucking industry has responded well to the reforms of the Motor Carrrier Act, demonstrating flexibility despite the impact of the recent recession. Indeed, the positive response of many carriers and their customers has contributed to the achievement of most of the Act's objectives within a relatively short period of time.

The issue of pricing is of particular concern to the NAM. Even though single-line antitrust immunity is not scheduled to expire until July 1, 1984, the trucking industry is in fact behaving as though the immunity had already ended. The benefits of marketplace pricing and increased price competition have accrued to some, but not all, shippers, truckers, and consumers for some time. This is especially true with respect to truckload traffic. However, LTL or small shipments traffic has experienced far less good fortune. This point requires some elaboration.

Those truckload carriers which have responded to the changed marketplace have established innovative and cost based rates while at the same time maintaining or improving service levels. Most of this activity has taken place outside the protection of antitrust immunity afforded by the rate bureaus. Price-service options have proliferated as envisioned by the drafters of the Motor Carrier Act.

Conversely, LTL tarffic has remained largely under the control of the rate bureaus. Rates covering this traffic have risen far faster than the wholesale or producers price index, resulting mainly from general rate increases, but also from restructuring. Elimination of antitrust immunity for general rate increases is necessary to end this inequity.

In its June 1, 1983 report to the President and the Congress, the Motor Carrier Ratemaking Study Commission recommended "the prompt and complete elimination of antitrust immunity for collective ratemaking for all rates, for freight classification, and for related activities in the motor carrier industry." The Commission further recommended that this be implemented on July 1, 1984, the same date on which single-line antitrust immunity will expire.

In view of the partial success of the Motor Carrier Act and the clear recommendation of the Study Commission, the NAM believes that legislation to complete the deregulation of the motor carrier industry is needed and should be enacted well before the July 1, 1984 effective date.

The Association and a broad coalition of trade groups, shippers and public interest organizations helped the Department of Transportation develop a bill proposal to accomplish these aims. We are frankly disappointed that the administration has failed to send the bill to the Congress.

It is essential to the health and stability of the trucking industry, shippers, and consumers, that this remaining economic regulation of the industry be abolished as soon as possible. If the administration chooses not to forward such legislation, the Congress should take the initiative.

To this end, we strongly support today's statement of the coalition. The outline for legislation in that statement will serve to put these important issues before the Congress. If these legislative principles are enacted into law, the development of a strong and healthy trucking industry will result.

Along with the other members of the panel, we are prepared to support legislation to complete the job of trucking deregulation that was begun by this Committee three years ago. The NAM thanks you, Mr. Chairman, for the opportunity to present our views.

I would be happy to answer any questions you might have.

TESTIMONY ON BEHALF OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Good morning, my name is James H. Edler. I am chairman of the Motor Rates and Practices—General Freight Committee of The National Industrial Transportation League. Accompanying me today is Nicholas DiMichael of League counsel.

The National Industrial Transportation League is a voluntary association of 1,800 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, freight, and transportation services of all modes. It is the only nationwide organization representing all types of shippers using all modes of transportation to move all types of commodities. Our members, directly or indirectly, are responsible for the routing of 80 percent of our country's commercial freight.

The League's primary concern is to assure that our national transportation system is sound, efficient, well-managed, and privately owned and operated, and that it meets the needs of the nation as well as the needs of shippers and receivers of commercial freight. To arrive at the policies and positions reflecting our broad range of interests, League members, at least annually, consider, debate, and vote on pertinent transportation issues. Throughout our more than 75 year history, the League frequently has been the spokesman for business and industry on transportation matters.

The League is a strong supporter of reforming the federal regulations governing the trucking industry. We were active in seeking the passage of reform legislation, and in participating in the Interstate Commerce Commission's implementation of the Motor Carrier Act of 1980.

Based on our members' more than three years of experience under a more competitive regulatory environment, the League believes that the 1980 reform law is accomplishing the 96th Congress's major objectives, and that it has resulted in benefits to shippers, carriers, and the public. The increased competitive flexibility created by reform has allowed shippers and carriers to explore price and service options tailored to meet today's economic conditions. Without this flexibility, the League believes that the recession would have had a more severe impact on U.S. producers and the jobs they generate to meet the demands of our nation's commercial needs.

As we have testified previously, the League believes that the economy, not the 1980 reform law, was responsible for the industry's poor financial performance during the past two years. A recent Business Week article (August 15, 1983, pp. 51-76) analyzing this year's second quarter performance of all industries seems to buttress this point. According to the business magazine, while industry as a whole experienced an 8 percent increase in annual profits from 1982 levels, the trucking industry's profits were up an impressive 55 percent—making it the fifth best performer of all industries surveyed.

When the figures were compared for second quarter performance, the profits were even more impressive—an 81 percent improvement over 1982 levels. The recovery for certain trucking companies from the second quarter of 1982 are even more startling. Yellow Freight experienced a 349 percent increase, while Arkansas Best's profits jumped 169 percent over those generated during the second quarter of 1982. As the economy continues to recover, the League believes that the profitability of this industry will continue to rise. We are convinced that the flexibility created by the Motor Carrier Act fostered the market environment which resulted in what appears to be the trucking industry's remarkable recovery.

In supporting the Congressionally forged compromise that is contained in the Motor Carrier Act, the League recognizes that this measure is only the first step in the transition toward ending unnecessary federal regulation of the trucking industry. We agree with this Committee's assessment, made at the time the Motor Carrier Act was passed, that further changes to this law would be needed based upon experiences gained through allowing a greater play of market forces.

The League would like to outline how our members believe the Motor Carrier Act should be further improved to ensure that the competitive objectives of motor carrier regulatory reform are fully realized.

In the entry area, the League would urge the committee to consider whether there is a need to continue the "public convenience and necessity" standard in the granting of operating rights authority as well as whether there is a need to make further improvements ensuring that all unnecessary entry regulations are eliminated.

The League would support the recommendation that the "fit, willing, and able" entry test be retained as the sole standard—eliminating the current "public convenience and necessity" test. We believe that this standard should require an applicant to show that he or she has secured the proper insurance and has a good safety record.

We also would urge the committee to review the entry reforms contained in the 1980 law to assure that the pro-competitive goals of the reform effort are continued throughout the phased elimination of all unnecessary federal regulation.

Analyzing the impact of reform law's rate reforms cannot be done without first addressing the scope of the industry's ability to collectively set rates. At present, the League's policy on collective ratemaking states: "The carriers should be subject to all antitrust laws, except wherein they are conducting their affairs in accordance with the national transportation policy, and in accordance with the rules and regulations prescribed by the Interstate Commerce Commission.

"As carriers obtain additional rate freedom to establish their prices and charges, there should be a counterbalancing reduction in the antitrust immunity provided in their ICC-approved rate bureau agreements."

This policy was formulated when shippers were trying to anticipate what would be the effects of the 1980 reform law. Accordingly, the policy was designed for flexibility to ensure that it addressed a wide range of possible results. It suggests an inverse relationship between the ability to collectively set rates, and the ability to price carrier services free of regulatory scrutiny. It implies that as carriers are allowed greater latitude in the pricing of their services, there should be a commensurate reduction in their ability to collectively set these prices.

Based on our experience under deregulation, and, after review of the recommendations of the Motor Carrier Ratemaking Study Commission, my committee has recommended to the League's officers and general membership that this policy be modified to support the elimination of the industry's antitrust immunity for collective ratemaking. This recommendation has since been supported by two other League committees, and will be presented to the League membership at this November's Annual Meeting.

Another factor influencing my committee's recommendation is the ICC's handling of collective rate actions. During the past two years, the trucking industry filed more than 50 separate requests for general rate increases. The Commission has approved all but a handful of these requests. Although the amounts sought in the majority of these rate requests varied according to weight and whether the movements were made in truckload or less-than-truckload lot sizes, the increases sought in each request generally ranged between 2 percent to about 10 percent.

We are deeply concerned about the impact these increases are having on LTL shippers, since the bulk of these rate increases affect their traffic. Since entry reforms do not benefit the LTL shipper to the same extent they do the truckload shipper, because of higher LTL entry costs, we believe that continued collective rate activity on this traffic segment should be carefully scrutinized. In fact, the League recently supported a petition asking the Commission to end this type of ratemaking for shipments weighing less than 1,000 pounds.

In addition, the ICC is acting on general rate increases without resolving the controversies surrounding two key pricing issues—namely, how to determine the revenue adequacy of the industry; and, how to determine how to properly allocate the platform costs associated with the handling of LTL shipments. The League has actively participated in the two major agency proceedings on these issues. We believe that the ICC should be directed to resolve these issues, which are critical to determining and monitoring the health of this important segment of our national transportation system.

We also would urge that, to the extent that the industry is permitted to set rates by general increase, this ratemaking technique be used only for cost recovery purposes. We believe that the needs of the industry and its consumers are better served if profits are pursued through individual pricing initiatives, rather than through across-the-board increases which ignore the marketplace conditions affecting each commodity.

The Commission recently issued a report affirming this belief. In its August 26 report in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers Since the Motor Carrier Act of 1980, the agency found that "The (carrier's) new pricing practices have greatly benefitted the shipping public and have led to increased carrier efficiency and heightened market sensitivity." The pricing practices contained in the Commission's remarks are the result of independent actions, not collective ratemaking.

In conclusion, the League believes that the marketplace, not the federal government, continues to be the most effective regulator of competitive truck transportation services. Our experience under today's more competitive regulatory environment demonstrates that shippers and carriers can find effective private-sector solutions to their business problems.

We thank you for this opportunity to present the views of shippers. We look forward to working with this Committee to continue to enhance the competitiveness of the trucking industry through the elimination of unnecessary federal regulation. We are now ready to answer any questions you may have.

Mr. ANDERSON. Please proceed.

TESTIMONY OF LARRY W. SMITH, MANAGER, TRAFFIC, THE UPJOHN CO., KALAMAZOO, MICH., ON BEHALF OF THE NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE AND THE DRUG AND TOILET PREPARATION TRAFFIC CONFERENCE, ACCOMPANIED BY DANIEL J. SWEENEY, COUNSEL; HUGH S. BRADY, DIRECTOR, REGULATORY REFORM AND TRANSPORTATION, NATIONAL ASSOCIATION OF MANUFACTURERS; AND, JAMES H. EDLER, CHAIRMAN, MOTOR RATES AND PRACTICES, GENERAL FREIGHT COMMITTEE, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, ACCOMPANIED BY NICHOLAS DI MICHAEL, LEGAL COUNSEL

Mr. L. W. SMITH. Thank you, Mr. Chairman. I understand that we are kind of under the gun here in terms of time and we are all tired. And I will try to make my comments very brief. I would like to highlight a couple of points in my prepared statement.

My name is Larry Smith, and I am here today representing the National Small Shippers Traffic Conference and the Drug and Toilet Preparations Traffic Conference. And I have accompanying me Mr. Daniel J. Sweeney who is counsel for both of those conferences.

As you indicated, I am employed by the Upjohn Co., of Kalamazoo, Mich., and in the position of manager of traffic.

The two conferences that I mentioned are basically groups of shippers who primarily are involved in the shipping of small shipments; there are many large companies; there are small companies, but we all have in common our concern in shipping small shipments.

We have been involved in basically all of the legislation leading up to the Motor Carrier Act and in some of the oversight hearings that have occurred since that time. We are very interested in what is happening and we have a couple of areas that we would like to touch on today in terms of how we see the Interstate Commerce Commission actually implementing the act.

The first one is one is—or perhaps I should say not implementing the act.

The first example that I would like to show is the area of rate regulation, particularly as it is referenced to small shipments. The clearest example of the Commission not following the dictates of the Congress in the act has been in the area of regulating motor carrier rates. Congress did not change the basic standards of legality for motor rates or the Commission's responsibility to review rate changes for conformity to the act.

Rather, Congress made it clear that rates must still meet the standard of being reasonable. Today, the Commission refuses to acknowledge that rate increases can be unreasonably high in today's climate.

During the past 2 years the Commission has approved into to every general rate increase by rate bureaus regardless of how inequitable. In that period there have been rate increases on small shipments of over 30 percent, a rate which has tripled the rate of inflation. On March 25, 1983, the Commission refused to suspend or investigate general rate increases by nine major rate bureaus of $800 million per year.

The Commission evidently does not believe that any rate increase can be unreasonably high as it places its faith in the "free market." The burden of the great bulk of these increases fell on small shipments. While small shipments are made by both large and small companies, the small companies are usually exclusively shippers of small shipments.

At least the majority, if not all of today's sitting commissioners can be described as deregulators. Undoubtedly they believe in the free market and that there is no need for them to regulate.

Apart from the fact that this is a decision of the Congress and not of the commissioners to make, the fact is that there continues to be an urgent reason to scrutinize and regulate general rate increases. The reason can be expressed in two words: rate bureaus.

LTL freight is not a competitive—not competitive price-wise as truck load freight. The most basic consideration is that shippers cannot usually afford to undertake LTL deliveries economically by its own private fleet as it can do with truck load traffic, which moves from one origin to a single destination in tact.

Beyond that, new entrants to the motor carrier field tend to be truck load oriented, as there is a very large capital requirement for truck—for establishing break bulk terminals, and new entrants do not typically have that kind of funding.

As a practical matter, rate bureaus, meetings of territorial groups of carriers are collectively setting the general rate increases on LTL freight. Faced with dwindling truck load volume and an increase in truck load competitors, they constantly have been opting for the traditional role of monopoly pricing; that is, charge as much as you please on the captive LTL market.

Though the carriers' motivation and incentives are clear, it is not at all clear why the Commission has thought it its statutory duty to regulate maximum rate increases under the present circumstances. While Congress thought that it was creating a better world for shippers by the Motor Carrier Act of 1980, the practical result through the Commission inaction has been the worst of all worlds for LTL shippers.

The carriers can collectively set rate increases and the Commission disclaims responsibility for examining their reasonableness.

One other example I would like to point out: Only recently, the majority of the Commission publicly verified its complete indisposition to perform its statutory responsibility to regulate rate increases. The Commission has two basic options to establish standards for reasonable rates: either on a case-by-case basis or in a general rulemaking proceeding.

Since it has initiated no rate investigations during the last 2 years, the Commission has no pending rate investigations initiated under the reign of the present majority. What it has had on its docket for decision are, first, several April 1978 general increases still under investigation; and second, a rulemaking, Ex parte MC-128, revenue need standards and the motor carrier general rate increases.

The first item is a general increase, SMCRC of April 1978, by the way. The latter proceeding, a rulemaking, was instituted in 1979 as an aid to the final decision in SMCRC, et al. Immediately after it had issued a decision in this case requiring a rollback of that general increase, the finality of the SMCRC decision was stayed pending a decision in the Ex parte MC-128, in order to reconsider the SMCRC case in that light.

Thus, the Commission had pending for several years both a rulemaking and a rate investigation proceeding, either of which was an appropriate vehicle to inform the carriers and the public of standards of reasonable rate increases.

On July 28, 1983, it issued a brief decision by majority vote with Chairman Taylor dissenting, dismissing both Ex parte MC-128 rulemaking and the entire group of SMCRC, et al. pending rate investigations.

No more complete abdication of its ratemaking functions could be imagined. The Commission has told the world that it is not interested in reviewing rate increases, and that it will not issue any standards as to what is a reasonable rate.

The second area that we are concerned about deals with the liability for freight damage. On its own, the Commission has written the loss and damage statute for freight forwarders and household goods carriers by allowing them to self-limit the amount of their liability without statutory required showing that the value would be reasonable under the circumstances.

In its decision in the Transconex case, No. FF-305, the Commission has ruled that such carriers will be allowed to limit their liability to a specified value simply because it gives shippers an additional option regardless of whether the value limit is unreasonably low.

It is clearly contrary to congressional policy to thus relieve the carriers for responsibility for their own negligence. More recently in a ruling involving bus transportation of freight, the Commission has approved a release value of zero liability for members of a rate bureau. While zero liability is directly incompatible with the limited value authorized by the statute, the Commission's approval of those collectively set rates is incomprehensible as it was approved because they were found to be carriers of passengers and not carriers of property.

In conclusion, as a member of these conferences, as a businessman, and as a citizen, I am dismayed and shocked to see that an agency such as the ICC can completely circumvent the legislation that was approved by the Congress. Shippers look to this committee to admonish the Commission in clear terms that Congress has not abolished rate regulation and that the Commission must discharge its responsibility to administer to that act.

Thank you.

Mr. ANDERSON. Thank you, Mr. Smith.

Mr. Brady.

Mr. BRADY. Well, I appreciate your understanding very much, considering our changed circumstances.

I want to point out that NAM participates with a coalition whose interest is to see legislation passed that would complete the deregulation of the trucking industry. Originally it was our intention to have a brief statement of the coalition copied into the record.

However, with these changed circumstances, I ask that I be allowed to read the statement at this time.

Mr. Chairman, this statement is submitted on behalf of the undersigned companies, associations, and other organizations regarding the need for further reforms to complete the work Congress began when it enacted the Motor Carrier Act of 1980.

As you know, a number of the organizations submitting this statement supported the 1980 act, and they will either be testifying or submitting their own statements on their specific concerns about the act and how it has worked to date.

The purpose of this statement is to present their views on one important issue: namely, the need to abolish remaining economic regulation of the motor carrier industry by the Interstate Commerce Commission.

This statement is limited solely to motor carriers of property and will not discuss regulation of the household goods moving industry or the intercity bus industry. It is the belief of the group signing this statement that current rate and entry regulation and immunity from the antitrust laws should be abolished, although DOT safety and insurance requirements should be retained.

A number of the organizations signing this statement wrote to President Reagan on July 20, 1983, urging the administration to support legislation drafted by the Department of Transportation, which would accomplish these goals. A copy of that letter is provided for the record.

[Letter referred to follows:]

JULY 20, 1983.

President RONALD REAGAN,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We understand that you are considering legislation drafted by the Department of Transportation that would abolish regulation of the trucking industry by the Interstate Commerce Commission (while retaining safety and insurance requirements) and that would transfer certain regulatory functions pertaining to household goods movers to the Federal Trade Commission.

We are writing to express our support for such truck deregulation initiatives and to urge you and your Administration to work strongly for passage of such legislation.

Abolishing ICC regulation of the trucking industry would further some important national goals. By ending needless red tape, a truck deregulation law could improve productivity in this major industry. It would also boost fuel conservation and help industries and consumers keep their costs in check, thus aiding in the fight against inflation. Finally, it would help sustain the economic recovery now underway.

As you are aware, the 1980 Motor Carrier Act, which reformed traditional ICC regulation of the trucking industry, was supported by a broad coalition of companies, associations, farm groups, consumer organizations and some members of the trucking industry, and many of these groups would support further reforms. The only opponents were some segments of the regulated trucking industry which remain opposed to change.

We urge you to make truck deregulation legislation one of your major policy goals in this Congress, and we are prepared to help in that effort.

Very truly yours,

Agricultural Cooperative Representatives, Inc.; American Greetings Corporation; American Retail Federation; Bristol-Myers Company; Clorox Company; Congress Watch; Council for a Competitive Economy; Crown Zellerbach; Food Marketing Institute; General Mills, Inc.; Household International; International Communications Industries Association; Lever Brothers Company; National Agricultural Transportation Association; National Association of Manufacturers; National Small Shipments Traffic Conference; National Starch & Chemical Corporation; National Taxpayers Union; Ore-Ida, Inc.; Private Truck Council of America; Sears, Roebuck & Co.; Super Value Stores; Union Carbide Corporation; United Fresh Fruit and Vegetable Association; Western Traffic Conference; and Whirlpool Corporation.

Mr. BRADY. While they have received no reply to date, they wish in this statement to urge Congress to take the initiative in this area by enacting legislation which would at a minimum accomplish the following goals:

One. Abolish all antitrust immunity for collective ratemaking, thus letting truck rates be set in the marketplace.

Two. Abolish all entry regulation for companies which can prove that they are fit, that is, that they can meet DOT safety and insurance standards.

Three. Abolish ICC rate regulation and the requirement that tariffs be filed with the Commission.

Four. Give the ICC broad authority to exempt carriers from any remaining requirements of the Interstate Commerce Act, which authority now exists with respect to regulation of both railroads and airlines.

Five. While these reforms could be effective upon enactment, Congress should also set a date upon which remaining ICC regulation of the trucking industry would end. To assure an orderly transition, however, the Commission should report to Congress on which of the remaining regulatory functions should be retained past that date.

As the committee will recall, the 1980 act was enacted with broad, bipartisan support in the Congress and with broad support from many sectors of the public. Enactment of a phase two law would complete the work Congress began in 1980 and would advance such important policy goals as increasing competition in this important industry, while eliminating wasteful economic regulation.

In this connection we would note that that ICC Chairman Reese H. Taylor, Jr. supports such deregulation. In addition, President Reagan stated in his remarks upon signing the Bus Regulatory Reform Act of 1982 that, "there is still too much federal regulation of the transportation industries."

He also called for broad measures to eliminate many economic regulations in transportation as well as in other fields in his February 1983 economic report of the President.

The undersigned groups appreciate this opportunity to present their views and are prepared to work with the committee on this important issue. They are Agricultural Cooperative Representatives, Inc., American Hardware Manufacturers Association, American Retail Federation, Bristol-Myers Co., Clorox Co., Crown Zellerbach, Food Marketing Institute, General Mills, Inc., Household International, International Communications Industries Association, K-Mart Corp., Lever Brothers Co., Thomas J. Lipton, Inc., National Agricultural Transportation Association, National American Wholesale Grocers Association, National Association of Manufacturers, National Starch and Chemical Corp., Public Citizen Congress Watch, Sears, Roebuck and Co., Super Value Stores, Inc., Union Camp Corp., Union Carbide Corp., United Fresh Fruit and Vegetable Association, and finally, Whirlpool Corp.

Mr. Chairman, I apologize again for the fact that you have not had an opportunity to review this statement, as it was our original intent to have this copied into the record. I do have additional copies with me. I would ask, since there is an enclosing letter to the President, that this statement to maintain the integrity of it, be copied in its entirety into the record as if read.

Mr. **Anderson**. It will be.

Mr. **Brady**. Thank you.

Mr. **Anderson**. Mr. Edler.

Mr. **Edler**. Thank you, Mr. Chairman.

My name is James H. Edler. I am chairman of the motor rates and practices, general freight committee of the National Industrial Transportation League. Accompanying me today is Mr. DiMichael, league counsel.

Based on our members, 3 years' experience under a more competitive regulatory environment, the league believes the 1980 reform law is accomplishing the 96th Congress major objectives and that it has resulted in benefits to shippers, carriers, and the public.

The increased competitive flexibility created by reform has allowed shippers and carriers to explore price and service options tailored to meet today's economic conditions. Without this flexibility, the league believes that the recession would have had a more severe impact on U.S. producers and the jobs they generate to meet the demands of our Nation's commercial needs.

As we testified previously, the league believes that the economy, not the 1980 reform law was responsible for the industry's poor financial performance during the last 2 years. A recent Business Week article analyzing this year's second quarter performance of all industries seems to buttress this point.

According to this business magazine, while industry as a whole experienced an 8-percent increase in annual profits from 1982 levels, the trucking industry's profits were up an impressive 55 percent, making it the fifth best performer of all industries surveyed.

When the figures were compared for second quarter performance, the profits were even more impressive, an 81-percent improvement over 1982 levels. The recovery for certain trucking companies from the second quarter of 1982 to the second quarter of 1983 are even more startling. Yellow Freight experienced a 349-percent increase, while Arkansas Best's profits jumped 169 percent over those generated during the second quarter of 1982.

As the economy continues to recover, the league believes that the profitability of this industry will continue to rise.

In supporting the congressionally forged compromise that is contained in the Motor Carrier Act, the league recognizes that this measure is only the first step in the transition toward ending unnecessary regulation of the trucking industry. We agree with this committee's assessment made at the time the Motor Carrier Act was passed, that further changes to this law would be needed based upon experiences gained through allowing a greater play of market forces.

The league would like to outline how our members believe the Motor Carrier Act should be further improved to insure that the competitive objectives of motor carrier regulatory reform are fully realized.

In the entry area, the league would urge the committee to consider whether there is a need to continue the public convenience and necessity standard in the granting of operating rights authority as well as whether there is a need to make further improvements, insuring that all unnecessary entry regulations are eliminated. The league would support the recommendation that the fit, willing, and able entry test be retained as the sole standard, eliminating the current public convenience and necessity test.

We believe that this standard require an applicant to show that he or she has secured the proper insurance and that they have a good safety record.

Analyzing the impact of the reform law's rate reforms cannot be done first without addressing the scope of the industry's ability to collectively set rates. At present, the league's policy on collective ratemaking suggests an inverse relationship between the ability to collectively set rates on the one hand, and the ability to price carrier services free of regulatory scrutiny. It implies that as carriers are allowed greater latitude in pricing of their services, there should be a commensurate reduction in their ability to collectively set those prices.

Based on our experiences under deregulation and after review of the recommendations of the Motor Carrier Ratemaking Study Commission, my committee has recommended to the league's officers and general membership that this policy be modified to support the complete elimination of the industry's antitrust immunity for collective ratemaking. This recommendation has been supported by two additional league committees and presented to the league membership at this November's annual meeting.

Another factor influencing my committee's recommendation is the ICC's handling of collective rate actions. During the past 2 years, the trucking industry filed more than 50 separate requests for general rate increases. The Commission has approved all but a handful. We are deeply concerned about the impact these increases are having on LTL shippers because the bulk of these rate increases affect their traffic.

Since entry reforms alone do not benefit the LTL shipper to the same extent as they do the truck load shipper because of higher LTL entry costs, we believe that continued collective rate activity on this traffic segment should be carefully scrutinized.

In fact, the league recently supported a petition asking the commission to end this type of ratemaking for shipments weighing less than 1,000 pounds.

In addition, the ICC is acting on general rate increases without resolving two controversies—without resolving controversies surrounding two key pricing issues; namely, how to determine revenue adequacy of the industry, and second, how to determine how to properly allocate platform costs associated with the handling of LTL shipments.

The league has actively participated in these two major agency proceedings. We believe that the ICC should be directed to resolve them.

We would also urge to the extent that the industry is permitted to set rates by general increases, that this ratemaking technique be used only for cost recovery purposes. We believe that the needs of the industry and its consumers are better served if profits are pursued through individual pricing initiatives, rather than through across the board increases which ignore the marketplace conditions affecting each commodity.

In conclusion, the league believes that the marketplace not the Federal Government continues to be the most effective regulator of competitive truck transportation services. Our experience under today's more competitive regulatory environment demonstrates that shippers and carriers can find effective private sector solutions to their business problems. We thank you for this opportunity to present our views. We look forward to working with you and your staff to continue to enhance the competitiveness of the trucking industry through the elimination of unnecessary Federal regulation.

We are now ready to answer any questions you may have. Thank you.

Mr. **Anderson**. Well, thank you, Mr. Edler.

Mr. Smith, I find your testimony extremely interesting. On the one hand we have been told that the ICC is ignoring rate discounting or lower rates, and now you are telling us that the Commission is ignoring rate increases on LTL traffic where those rates are set pursuant to collective ratemaking.

Do you believe the ICC is intentionally implementing a rate policy on LTL shipments that will encourage abolition of antitrust immunity for collective ratemaking?

Mr. L. W **Smith**. Well, one would question, certainly, the kind of lack of regulation of rate increases we have had. I do not know as I would say it is intentional, but the impact is certainly that, and as a matter of fact, these conferences have supported the elimination of regulation, antitrust immunity on shipments of under 1,000 pounds for that very reason.

We seem to be between a rock and a hard spot in this situation.

Mr. **Anderson**. Mr. Sweeney?

Mr. **Sweeney**. Mr. Chairman, if I could augment the answer; during the prior series of Commissioners when Commissioner Gaskins was in—this was before the present regime—there was that kind of a thrust to some of the decisions over there. We would protest a rate increase, and quite frequently the Commissioners would suspend it, the rate Bureau increase.

And it seemed as though that these Commissioners were putting some pressure on the rate bureaus by cutting back or suspending the rate increases, the general rate increases. But we have a set of commissioners now who are not suspending the rate increases of the rate bureaus.

And the only thing that we can perceive is that in their rush to the free market, the present Commissioners do not recognize that they have the rate bureaus making these rate increases, which are essentially an anticompetitive situation; in other words, a lock step rate increase. These Commissioners do not understand that by approving their rate increases they are actually enhancing the situation of the rate bureaus in perpetuating it.

I think if the current Commissioners were to start suspending the rate bureau increases and say, these are not free market increases, come back with individual rate increases, you would see everybody over here trying to terminate the rate bureaus.

They are doing exactly the wrong thing if what they want to do is terminate the rate bureaus.

Mr. ANDERSON. I have another question for Mr. Smith: Do you believe that you will be able to get lower rates and be better off if antitrust immunity for collective ratemaking is eliminated?

Mr. L. W. SMITH. Well, I think again the indication from the Commission has certainly been that we are not getting any help from that area at all. I think the chances are that under the free market system at least we will be able to negotiate on a one to one basis. I think overall that will enhance our ability to get lower rates.

Mr. ANDERSON. Mr. Brady, segments of the trucking industry disagree with you about the need for antitrust immunity for collective ratemaking. What public benefits will result if it is abolished, and how would its abolishment affect the trucking industry?

Mr. BRADY. Well, we believe that first and foremost that the establishment of a collective ratemaking system functioning under the umbrella of antitrust immunity leads inevitably to higher than cost base prices and that these prices are in fact artificially based compared with competitively set rates, which would be established in lieu of that system.

Now, to the extent that is true, there is contradicting testimony that I heard here earlier. There is a consumer benefit in that these savings in costs are passed through to consumers who pay less prices for goods and services that are made available by shippers who operate under that system.

Mr. ANDERSON. Mr. Edler, does the league believe that there should be a legal floor for motor carrier rates? And would you explain your answer.

Mr. EDLER. The league's position at present from its policies is that we have no position with regard to whether there should be a legal floor to rates. And I do not think I can go much further than that because the league has no policy with regard to that.

Mr. ANDERSON. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Edler, very quickly, you mentioned that the league was responsible for roughly 80 percent of the Nation's commercial freight. Would you care to share with us without divulging any secrets how your 1983 situation looks in comparison to past years? Has it improved? Has it not improved?

Mr. EDLER. In terms of the league itself or the motor carriers?

Mr. SMITH. In terms of the motor carriers and the business that you have had.

Mr. EDLER. Well, I happened to pick up an article out of a magazine called Transport Topics. Transport Topics is a publication of the American Trucking Association, a group you heard from this morning. And they talked about the second quarter of 1983, a period not addressed by the witnesses on that first panel.

I would like to share some of the information from this carrier magazine. In the second quarter of 1983, the operating revenues of motor carriers increased 132 percent, and the after tax income of motor carriers increased 245 percent.

Moreover, the operating ratio was 94.2. Now, in the past the Interstate Commerce Commission has accepted a 95 operating ratio as one which indicated profitability. The lower the operating ratio, the higher the degree of profitability.

So, apparently in the second quarter of 1983, the carriers' profits were not even justified as to any kind of a general rate increase. Now, these data are collected from 163 motor carriers belonging to the Regular Common Carrier Conference of the American Trucking Associations. And I do believe they represent the same group that Dr. Silberman was talking about. However, he did not talk about the second quarter of 1983.

Mr. SMITH. Any projections about the rest of 1983 and 1984?

Mr. EDLER. There are no projections in the American Trucking Association article. However, it is the league's position that the motor carriers would indeed have shared with the improving economy. So all the kinds of things that are turning our economy around—and I think all of us are thankful for that—are certainly going to assist the motor carrier industry's profitability picture.

Mr. SMITH. Do you think the ICC favors railroads over truckers?

Mr. EDLER. I have no position on that.

Mr. SMITH. Oh, really. Thank you. That is all I have.

Mr. ANDERSON. Thank you very much, Mr. Edler, Mr. DiMichael, Mr. Brady, Mr. Smith, and Mr. Seeney for fine presentations.

We do have one more panel, plus two more individual witnesses. It is my hope that we can get out of here by 5 o'clock, because the members have to be briefed then on the Grenada situation. And, if we do not get through by then, we will have to have them back later to complete the witness list.

At this time we have a panel consisting of Jerry White of J. White and Associates; Edward S. Paull of Precision Steel; and William Voeller of Sprouse Reitz. And we do have your full, prepared statements. They will be made a matter of the record at this point.

[Statements referred to follow:]

STATEMENT OF JERRY WHITE, TRAFFIC COUNSEL, INLAND EMPIRE FREIGHT TRAFFIC ASSOCIATION

INTRODUCTION

I very much appreciate the opportunity to appear here today and present the picture from the little guy's point of view.

My name is Jerry White and I am Traffic Counsel to Inland Empire Freight Traffic Association (IEFTA). IEFTA is non-profit association of Eastern Washington, Northern Idaho and Western Montana shippers and civic interest groups whose goal is the promotion of economic development and increased economic activity in our area in so far as freight rates and services affect it. I am also President of J. White & Associates, Inc., which is a freight transportation consulting service. Although we regularly performs our services in connection with all modes of transportation, the members of IEFTA are small business concerns and probably 85 percent of our workload involves the motor carrier mode.

I have performed freight consulting services from a Spokane, Washington, base of operations for eighteen years and prior to that had eleven years of industrial traffic management experience with a large food wholesaler and with the U.S. Atomic Energy Commission at Richland, Washington. I have a BA and MBA from the University of Washington; I am a Certified Member of the American Society of Traffic & Transportation and a Registered ICC Practitioner. Although I continually perform services under a contract with Argonne National Laboratory (U.S. D.O.E.) in the specialized field of transportation of radioactive materials and represent several shippers outside of our Inland Empire area including a national chemical fertilizer manufacturer based in Phoenix, Arizona, and several other clients in the Seattle area, the preponderance of my clients are in the immediate (100 mile radius) area of Spokane and all are "small business" manufacturers and distributors. We are a "full service" consulting operation appealing to the businessman who needs expertise in managing a significant freight bill but is not of such size as to be able to afford in-house, full time expertise. I am here today to present the picture from that business person's point of view and I very much appreciate being afforded the opportunity to do so. I know you regularly hear from National Industrial Transportation League, The National Small Shipments Traffic Conference, The Drug & Toilet Preparation Traffic Conference, The National Association of Manufacturers, etc., etc., all of which I'm sure are fine organizations but all of which I'm equally sure are representative of Big Business interest—I was for some years an active member of the NITL and I am currently a member of NASSTRAC and I have much respect for the work they do but I also know they do not reflect the interest of the small business person in this country. Policy determination and the controlling cliques of all these associations are strictly "Fortune 500" representatives. I came here today in the hopes of airing the view from the other perspective.

Spokane's one big claim to fame is that it is the second largest city between Minneapolis and Tokyo. No matter how you package it the metropolitan area is scarcely 300,000 population and our economy is highly Agricultural/Extractive based. Wheat, legumes, beef; lumber and paper; mining are the base with some Aluminum and Magnesium reduction plants tossed in. We have some light manufacturing virtually all of which is located here because the innovator who started the business wanted to live here and not because it is the best place, economically speaking, to locate a business. In summary we are a pretty average smaller city; a services center at Spokane serving a rural region for a radius of two hunderd miles or so.

THE PROBLEM

Although the Motor Carrier Act of 1980 did make some changes of substance, it did not, as I read it, make any change whatsoever in 49 USC § 10741(b) applicable to motor common carriers and reading in part:

"A common carrier providing transportation or service subject to the jurisdiction of the Commission under Chapter 105 of this title may not subject a person, place, port, or type of traffic to unreasonable discrimination"

Unfortunately the present make up of the ICC refuses to recognize as unreasonable even the rankest types of discrimination which are commonplace while they extol the virtues of price competition and the free market. We have laws in this country against bribery yet it would appear Commisioner Andre condones even bribery as he has been widely quoted in the press as stating:

"Bribes among principals are probably one of the clearest instances of the free market at work, they are just discounts."

It is amazing that with that type of mentality the Commission ever backed away from "named shipper" tariff provisions yet they did so in 1981 after the carriers started rampant discrimination by simply publishing tariff provisions for the account of a named shipper only. Be that as it may, they have condoned blatantly discriminatory tariff provisions repeatedly. Thus the "kick back" discount flourishes to the benefit of the unscrupulous even though obviously discriminatory and actually borders on just plain fraud. The "kick back" discount is openly available by some carriers and simply involves a 15, 20, 25 or whatever percent discount to be applied on shipments made on a collect basis with the discount paid to the shipper; the consignee pays full tariff rate but the shipper gets a rebate. That is a most blatant abuse of discounting but other more open applications of rate discounts are just as discriminatory because they are made available to only the shippers of the most desirable nature which almost invariably translates to big business with lots of tonnage clout. We see such shippers being granted discounts of 25 to 30 percent as a normal course of business while small business pays full tariff rate or, if he gets a discount at all, it would range in the area of 12 to 15 percent. Again, rank discrimination and certainly unreasonable by any historic guideline. I am not here to deplore "discounting" per se as any one can recognize it is simply a "merchandising" or perhaps more contemporary verbage, "marketing", tool. Unfortunately it is applied in a manner resulting in unreasonable discrimination. Yet this Commission finds in a recent rulemaking proceeding, MC166, that based on economic theory, discrimination is unlikely to occur in the motor carrier industry.

I would pause here to accent one of the major problems you need to address. Although the Motor Carrier Act of 1980 should not have treated the issue of collective ratemaking on released value rates any differently than it treated all other collective ratemaking and that provision will cause totally unnecessary headaches for shippers and carriers alike and although that is a significant issue to address, it is of minor importance when compared with the blatant mal-feasance of present Commissioners. The ICC is a creature of Congress but one totally out of control and seemingly subservient only to a misguided notion of an attainable utopia through free market competiton even to the point of condoning bribery. Someone certainly ought to be able to prosecute a malfeasance non-feasance charge and bring this chaos to a grinding halt. There are those that advocate sunsetting the ICC and that is certainly one solution to the problem, however, if that is the goal, you must first set up a reasonable alternative to avoid abuse of the public. We regulate "free market" competition in goods through the Robinson-Patman Act and the National Association of Manufacturers seems to stand up under the burden yet aside from the Interstate Commerce Act we have no legislation outlawing discrimination. Unfortunately our problem today is not the law; our problem is a total lack of enforcement of it and even worse, a positive encouragement by those entrusted with enforcement duties towards violation of it. In summary your problem is a Commission not observing or enforcing the law as written. I seldom agree 100 percent with ATA but I must concur in that.

As further evidence of this problem we have the spectacle of a Commission doing all in its power to allow contract carriers exemption from tariff filing requirements while at the same time granting indiscriminately all carrierrs who can demonstrate rudimentary financial responsibility contract carrier authority. Obviously the motivation is to place carrier pricing in the dark. What possible advantage is there in placing carrier pricing in the dark? Obviously the facilitation of unreasonable discrimination. And to whose advantage? Obviously big business—whether big carrier or big shipper is immaterial—the advantage will be to both.

And while we are on the subject of discrimination disadvantaging the small business person and the small community, I would like to discuss the particularly irksome bunch of smoke generated notably by DOT and ICC and those advocating deregulation. I would like to state that the issue was never service to the small community and any lack of it; the issue was always the impact on their economic viability of the increased cost of such service to small communities. Only advocates of deregulation raised the "loss of service" smokescreen and then crowed that it never happened. What has happened is just what I knew would happen—a huge escalation of freight cost to the smaller communities and on small shipments. Rural America will no doubt have service but the price will be extremely dear and definitely discriminatory. I am not here to say we have gone too far legislatively but I am here to say we in the hinterlands are suffering administratively.

A SECOND PROBLEM

Aside from administrative non-feasance there is an area of regulatory law that has been overlooked and should be adjusted and that involves the relationship between regulatory law, practices, and administration in the motor carrier of property field in interstate versus intrastate commerce. In regulatory reform legislation covering the rail mode of transport Congress saw the wisdom of granting the railroads companion freedoms from conflicting state imposed constraints but that issue was not addressed by the Motor Carrier Act of 1980. This oversight is causing considerable problems particularly to the economy of the State of Washington which imposes a very rigid form of regulation on motor common carrier traffic in Washington intrastate commerce. In Washington the Utilities and Transportation Commission prescribes the rate all common carriers must assess and publishes the tariff. Carriers not assessing state prescribed rates are fined and forced to do so. There is absolutely no price competition whatsoever as only the state prescribed rate may be charged. This is an absurdity in the light of trends in motor carrier pricing in interstate commerce. We in Eastern Washington are doubly damned—discrimination is rampant in interstate commerce and no price competition whatsoever in intrastate commerce. Although my knowledge of intrastate trucking regulation is limited, I know of no state that more stringently regulates for hire trucking than Washington and in truth it is impossible to imagine a tighter control. Certainly if Congress can usurp state powers to regulate the rail mode of transport, it can also exert some influence over the state regulation of trucking particularly where such regulatory theory is so diametrically opposite. About 100 years ago it was said this nation cannot long endure half slave and half free; I would modernize that to say public needs cannot be effeciently served by motor common carriers half regulated and half uncontrolled.

SUMMARY

Our Interstate Commerce Act as it now stands could be improved by amending the law in minor detail such as allowing collective ratemaking procedures on released value rates but in essence we don't need much additional legislation but rather adequate administration. On the other hand we do need consistency of regulatory climate as between interstate and intrastate for hire motor carrier operations and, where intrastate regulation is unduly burdensome, federal law should be made to override for the sake of simple consistency. It has been done for the rails; let's do it for the trucks. It is my feeling that although the collective ratemaking process has its drawbacks, it does, nevertheless, facilitate and indeed forces business to be done "in the sunshine." It thereby precludes discrimination or at least, if discrimination exists, it is evident for all to see. The present Commission seems determined to promote a climate of bussiness "in the dark" and the dark only facilitates unreasonable discrimination. If that's what we want, we should repeal 49 U.S.C. § 10741 and declare all discrimination just and a desirable goal of public policy. I don't think that's what even big business really wants even though it is the result of what they advocate.

STATEMENT OF EDWARD S. PAULL

My name is Edward S. Paull, 3500 North Wolf Road, Franklin Park, Illinois 60131. I am Traffic Manager of Precision Steel Warehouse, Inc., with principal offices at Franklin Park, Illinois.

Precision Steel Warehouse, Inc. is engaged in the sale and distribution of steel coil and sheet products. Its products are processed and distributed from plants located at Franklin Park, Illinois and Charlotte, North Carolina. Raw materials are received at these plants, from origins at numerous points throughout the United States and finished goods are shipped from the Company's plants to all points in the United States.

Motor carrier service is used for both the inbound and outbound movements and virtually all outbound traffic moves LTL class rates. From 190 to 200 shipments per day originate at this facility. I am responsible for all traffic and shipping functions at the Franklin Park, Illiniois facility and have over 20 years experience in traffic and shipping.

I am authorized to submit this statement on behalf of Precision Steel Warehouse, Inc., by Mr. David Hillstrom, President and Chief Executive Officer, and represent that it sets forth the official position of Precision Steel Warehouse, Inc.

It is our opinion that the full impact of the loss of antitrust immunity for collective ratemaking will be felt by small and medium size businesses such as ours. The loss of collective ratemaking will result in greatly increased costs to our firm, which means increased costs to the consumer. There would also be a reduction in completion among carriers serving smaller shippers. The Interstate Commerce Commission is presently in the process of eliminating collective ratemaking by administrative fiat in Ex Parte No. 172, *Withdrawal of Antitrust Immunity For Collective Ratemaking on Small Shipments.* The Commission erroneously relies on the majority report of the Motor Carrier Ratemaking Study Commission.

In formulating their recommendations to Congress, the Motor Carrier Ratemaking Study Commission did not serve the interest of the general public for two reasons. First of all, the makeup of the Commission predetermined it's conclusions. One "motor carrier" represented no one but himself. The two "shipper" members were representing the interests of large corporations and favored total deregulation. One Senator's contribution was to have each hearing opened by having a statement read which expressed his regrets at not being able to attend and reaffirming his support for total deregulation. Secondly, the witnesses approved to appear before it represented a wide spectrum of interests. Transportation lawyers, economists, college professors, top executives of major motor carriers, representatives of national organizations and federal agencies all expressed their views and submitted testimony. The only interest not represented was that of the traffic manager activity involved in the day-to-day task of moving this nation's goods. Surely there must be a few traffic managers in this country who may have been able to speak about the facts of transportation rather than the theory. It may have been interesting and informative to hear from one or two of "those guys, in the trenches" as we were referred to by the spokesman for the National Association of Manufacturers.

In theory, the open marketplace, unencumbered by government regulation, is the ideal expression of the free enterprise system. The reason for my offering this statement is to bring to your attention the matter of practical application of transportation regulation rather than theory.

In your deliberations, I feel it is absolutely essential that you separate truckload traffic from less than truckload shipments. The overwhelming number of witnesses who have and will testify before you, and statements you receive which support removal of antitrust immunity from collective ratemaking, will represent interests who are concerned with volume or truckload traffic. In general, these are the giants of American industry. This type of traffic has for some time, in effect, been "deregulated". Shippers of volume traffic have had their choice among commodity rates, contract carriage, irregular route carriers, private carriage, etc. Competition among carriers of all types has always been fierce for this type of business. No one is advocating that this be changed. Not only do shippers have a choice, but this type of traffic is usually generated by large shippers who have both the manpower and resources to take advantage of the large number of rates available.

When you enter the realm of LTL traffic, you are talking about an entirely different subject. You need only look at the motor carriers themselves to see this. For many years, virtually every carrier has had a "Special Commodities" division which handles much of their truckload traffic. Their operations are usually totally separated from the general freight operations except for their names. Much LTL freight is generated by small or medium size businesses and the receivers are of similar size. Responsibility for the traffic function in these firms varies greatly. Some employ highly qualified professional traffic managers. In others, this function is a "sideline" for a purchasing or sales manager. In many smaller businesses, the responsibility rests with a shipping foreman or clerk with little detailed knowledge of the traffic function.

A simple fact of life is that until recently, only large corporations and a few progressive smaller businesses have paid any attention to their transportation function. For many years, getting goods to the market has been looked at almost as an afterthought. It was the operation at the back door; necessary, but not important. With the recent realization that transportation costs are a significant part of the total price of a product, more businesses are looking at their shipping/traffic function with a new perspective. Publicity surrounding the Motor Carrier Act of 1980 has made top management of many small firms attach a new found importance to the transportation of their goods and the effects of its cost and service on their business. But transportation professionals are in short supply and it will be some time before there are enough available for the job that needs to be done. In addition, most motor carriers do not possess the capability to set individual LTL rates on all commodities to all destinations they serve. What would their cost be to achieve this capability? Are enough qualified personnel available? A step-by-step improvement in our current system would enable shippers and carriers alike to train qualified personnel.

Without collective ratemaking, the proliferation of indiividual carrier tariffs would produce a chaotic condition among smaller businesses. Decisions would have to be made. Does a shipper incur additional expense and employ qualified traffic personnel (if they can be found)? Do they maintain a tariff library or use a tariff service? How much will it cost? Do we restrict the number of carriers we do business with so we can keep up with the rate structures? The result would be a gigantic burden on the general public and small shippers in this country.

We would anticipate a requirement of one additional clerical employee, one more loader and fork lift if collective ratemaking were abolished. With fringe benefits, this would amount to approximately $70,000 per year. Multiply this by the tens of thousands of businesses our size who would be in a similar situation and you are talking about a sum of money that even Senator Dirkson would have called "real money". All of these additional costs would eventually be borne by the consumer. Our plans to utilize our modest computer capability for freight rates and routing would be destroyed. We do not have the manpower or resources to handle either the volume of entries or constant changes in rates and classifications. If the Motor Carrier Act of 1980 was intended to be leigislation to create jobs, it should have been labeled as such.

No reasonable person is suggesting that LTL class rates be etched in stone. As one of the many thousands of small shippers in this country, Precision Steel Warehouse, Inc. only asks that motor carriers be allowed to set and publish rates collectively which are reasonable and uniform for like commodities and are published for all shppers to see. Those shippers who are resourceful and/or who wish to expend the time, energy and money necessary, will still be able to negotiate rates or other cost saving programs under the current structure. Freedom to offer rates above or below this "base" would allow progressive, efficient carriers to offer innovative pricing to attract business and/or meet competition. Publication of these programs and/or rates will allow all shippers to make rational decisions whether or not to spend their resources to initiate similar programs. There must be some base or starting point at which all shippers can look to gauge both the carriers and their own performance as well.

The elimination of cross subsidies of freight rates in which each shipment would be assessed a freight rate reflecting the carrier's actual cost is admirable. However, with the thousands of commodities loading in tens of thousands of trailers filled with hundreds of thousands of shipments in varying combinations each day, this is a totally impractical approach. In promoting the deregulation of the Motor Carrier Industry, advocates of the removal of antitrust immunity for collective ratemaking offer many theories in the same vein; admirable but impractical for all but large corporations and textbook transportation experts.

Interestingly, advocates of the elimination of cross subsidized rates frequently sing the praises of the simple, "fair" rate structures used by United Parcel Service and forwarders such as Federal Express. Interesting because UPS charges Precision Steel Warehouse, Inc. and all other shippers in our zone the same rate to ship across the street or to Green Bay, WI. Federal Express charges the same rate to ship identical parcels to Milwaukee, WI, Grand Rapids, MI, Washington, DC, or Los Angeles, CA.

Many proponents of total deregulation frequently point to the airline industry in their arguments. The proliferation of the so called "super-saver" fares are usually highlighted as an example of the merits of deregulation. What they fail to mention is that these fares are intended to fill empty seats on specific low density flights by attracting those people who normally would not fly because of cost. These fares apply on flights to traditional vacation areas and/or on off-hour flights with low load factors. This situation does not exist in motor transportation. There are no manufacturers producing goods, just waiting for a "super-saver" rate to a given point before they begin to distribute their products. There is no untapped market waiting for the motor carrier industry.

While the reduced fares have benefitted many people who do not oridinarily fly, what of the traveler who forms the backbone of airline revenue, the American businessman who flys frequently during regular business hours? These "prime-time" high load factor flights have fares which have skyrocketed the last few years. If it were not for the Air Traffic Controller strike, which forced airlines to reduce schedules and the down-turn in our economy which enabled many air carriers to secure wage reductions from their employees, even more trunk carriers would be in dire financial straits.

Another factor in airline deregulation that is often overlooked is that the major trunk carriers have reduced or abandoned service to smaller communities and other less profitable routes. In many cases the small commuter type carriers have picked up the slack. While the direct cost to fly these routes may not have increased, many of these lines are subsidized by the Federal Government at an additional cost of many millions of dollars to the public. The same thing can be expected to happen with respect to the motor carrier industry. Unfortunately, unlike the commuter airlines, the small regional trucking companies are not subsidized by the Federal Government.

Another serious concern of Precision Steel Warehouse, Inc. is the avalanche of predatory rates which have forced smaller carriers out of business and leave shippers at the mercy of the large survivors of the industry. The beginnings of this can be seen in the "Discount-Mania" in the industry today. Most well-run carriers have operating ratios in the low to mid 90's. Giving away 10, 20 or even 50 percent of the revenue on shipments can only result in financial disaster for all but the largest of carriers. What would come next for small shippers and small communities? Subsidized regional motor carriers? A final concern we would like to put forth is the real possibility that the loss of collective ratemaking may very well create the same situation that resulted in the original Motor Carrier Act. I am speaking of the illegal rebates. This condition exists today. In one instance, it has been sanctioned by the Interstate Commerce Commission by allowing carriers to refund monies to someone other than the party bearing the freight charges. Outright kickbacks are becoming a fact of life. The photocopy attached speaks for itself. We do not need to make prostitutes of the shippers of this nation.

We acknowledge that there are many improvements which can be made in the rate structure and classification system in the motor carrier industry. The outlook for motor transportation in this country and the public it serves would be bright indeed if the energy being directed to dismantling our present system without a reasonable replacement were directed toward a step-by-step improvement with full consideration of the consequences to *all* shippers and receivers and not the interests of a small number of industrial giants. It is our hope that in your deliberations you will keep in mind the needs and concerns of Precision Steel Warehouse, Inc. and the many thousands of firms like us who will be deeply affected by your decision.

UNION CARBIDE CORP.
Red Oak, Iowa, September 9, 1982.

Precision Steel Warehouse,
Franklin Park, IL.

DEAR SIR: An agreement has been reached between Union Carbide and motor common carrier "X" for LTL Shipments which relative to other carriers represents a significant savings. This discount will only be applicable if materials are shipped "collect". Motor common carrier "X" will not extend this discount if the freight is prepaid. Therefore, we are asking that all LTL shipments be shipped via motor common carrier "X" and also not prepaid but "Collect".

Thank you,

W. H. MAXON II,
Purchasing Agent.

STATEMENT OF WILLIAM L. VOELLER, TRAFFIC MANAGER, SPROUSE REITZ CO.

My name is William L. Voeller. I am the Traffic Manager for Sprouse Reitz Co., which is a retail chain of general merchandise stores located in twelve western states. Our headquarters are located at 1411 S.W. Morrison, Portland, Oregon. I have worked for Sprouse Reitz since 1972. In my present capacity, I have overall responsibility for the company's transportation and distribution activities, both inbound and outbound. Prior to 1972, I held a similar position as Traffic Manager for Cascade Corporation, a Portland based manufacturer of hydraulic lift truck equipment. Virtually all of the shipments of both my current employer and my previous employer fell into the less than truckload category (shipments weighing less than 10,000 pounds). Therefore, I have a great deal of firsthand experience in arranging for the transportation of LTL freight. My discussion here today is based primarily upon my experience and observations in my current employment.

Sprouse Reitz Stores are small, variety type stores, which are primarily located in small communities in the twelve western states. We have 330 such stores operating today. Attached hereto is a listing of our stores by name and address. Opposite each listing, I have indicated the population of each town in which the store is located.

The subcommittee will observe that the great majority of our stores are located in what I consider to be small towns.

We purchase a large variety of goods in small quantities from hundreds of suppliers located throughout the United States. These goods sometimes are direct shipped to our stores, while in other instances they move into consolidation warehouses located in Portland, Oregon, Los Angles, California, and Salt Lake City, Utah. These consolidated shipments are then re-shipped, on regular schedule, from the warehouses to our 330 stores. Most of both our inbound and outbound freight moves in interline service. This inbound and outbound distribution network requires the services and facilities of hundreds of carriers. Obviously, a huge matrix of rates is involved, in view of the diverse commodities, origins and destinations.

I almost didn't appear here today, because of a deep-rooted feeling that anything I might say would make little difference in the ultimate outcome of whether or not some degree of reasoned regulation continues in the motor carrier industry. Much of this concern emanates from my appearance before the Motor Carrier Ratemaking Study Commission in San Francisco, California, on February 12, 1982, at which I testified and submitted a detailed statement why *users* of the motor common carrier network needed a continuation of the factors which I believed had led to a fairly sound transportation system in this country. That Commission, despite substantial evidence concerning the benefits of ratemaking through collective action, sent a report to the President and Congress recommending total abolishment of immunity to make rates collectively. I hear that recommendation now offered by DOT and others as gospel—with nothing being said about the closeness of the Commission's vote—6-4 (after, I might add, an initial 5-5 deadlock which was broken only by the replacement of one of the Commission members from the Senate).

In addition, what I believed to be a generally reasonable compromise on the matter of regulation in the motor carrier industry (e.g., the Motor Carrier Act of 1980) seems to have deteriorated into a situation of virtually no regulation at all—something I don't believe Congress intended. As a result of the current posture of the Interstate Commerce Commission and its non-performance in carrying out its responsibilities, I see major threats to our transportation system by organizations and individuals who are suggesting that we throw out the entire regulatory system.

My decision to submit testimony to this subcommittee results from my sincere belief that Congress is hearing only from a few large, powerful, influential, special interest groups or individuals and that the voices of the majority are not being heard for whatever reasons. As a representative of one of the thounsands of smaller shippers I ask that you give due consideration to our needs as you proceed to analyze regulation of this vital, life-sustaining industry.

The Commission's performance over the past two years in its administration and interpretation of the Motor Carrier Act has raised a number of serious concerns. The most recent example is its action in instituting Ex Parte No. MC-172, in which it has indicated an intention to eliminate antitrust immunity for ratemaking on shipments under 1,000 pounds, and has additionally expressed an interest in eliminating all antitrust immunity. It is my understanding, that in the Motor Carrier Act, Congress sought to give the Commission explicit direction for the administration of the Act with respect to rate bureaus. I am aware of nothing in the Act indicating that Congress intended to give the Commission power to wipe out the ratemaking system completely with respect to small shipments—which represents the great majority of my shipments.

I do agree with those who propose the action on small shipments that we cannot tolerate the increases we have seen on those shipments. I disagree with their contention that the cure is to eliminate regulation of rates. The answer is to force the Interstate Commerce Commission to administer the existing laws concerning the establishment of lawful rates. Permit me to briefly explain why this latest proposal alarms me.

Under the present system, my traffic department staff (consisting of my self and three clerical persons) does not need to become involved in the mechanics of determining the routing and interline carriers for the hundreds of shipments which are received and dispatched on a daily basis. We are able to tender any shipment to any of the carriers serving our company with the knowledge that the shipment will reach its destination via the most efficient and expeditous route, and that the resulting rate will be reasonable, if properly regulated. To put it simply, the present system can work, because all of the carriers are participating in the through routes and joint rates published in the rate bureau tariffs. If this system breaks down, due to the recommended elimination of antitrust immunity, the staff and budget of my traffic department would have to increase substantially in order to keep track of individual carrier tariff rates and the multiplicity of routes with combinations of local rates. Even then, we would not be able to do the job as well as it is presently performed. This increased administrative cost and burden upon the users of the system is a cost which I have not seen mentioned in any of the discussions on this subject by economists who speculate that abolition of the rate bureau system will result in lower costs. In fact, one independent study conducted recently by a leading consulting firm suggests that elimination of collective ratemaking could substantially increase shippers' costs.

Business decisions, including the pricing of our merchandise, depend upon advance knowledge of our costs. Consequently, we must be able to calculate freight costs from each supplier to each store on every item in our inventory, in order to arrive at a proper retail price, and in order to make sound business decisions. Large companies, with sophisticated traffic departments, might be able to process the volume of information required to determine freignt costs under a fragmented rate structure. It would be much more difficult for small companies, such as ours, with small traffic departments, or with no traffic department at all to accomplish the task. The classification and class rate structure and the rate bureau method of publication is of enormous assistance to our company in this respect, when it is in place and working properly. It would be nearly impossible for us to determine our freight costs in advance without the benefit of rate bureau tariffs. In addition to the need and the capability to anticipate and forecast our freight costs, we need to be able to check freight bills as presented, in order to determine their accuracy. Under our current system, when freight bills are presented by carriers, we have an opportunity to audit them to insure that they conform to the published tariff rates. If each of the carriers involved in our traffic were maintaining an individual schedule of rates, it would be absolutely impossible for us to perform that function.

I believe that some of the shipments which we receive or tender are quite attractive and profitable to the carriers. I am equally certain, however, that many of our shipments are only marginally attractive. Many are smaller shipments, moving to out-of-the-way towns. Many of the shipments have low density. Some of the commodities are fragile, exposing the carriers to a major risk of claims for loss or damage. Yet, our superior transportation system enables me to know that all of the freight will move to its ultimate destination. I do not need to be concerned that somewhere a connecting carrier will refuse toi accept the shipment.

There are other subjects of serious concern to me. As I understand it, the Act which Congress passed in 1980 charges the I.C.C. with enforcing provisions in the Act regarding reasonableness of rates without unreasonable discrimination or unfair or destructive competitive practices. In my opinion, some types of discounting presently being permitted by the I.C.C. are totally unjustified. Sprouse Reitz competes directly with some of the largest general merchandise retail stores in the country. These gaints are presently able to extract large discounts, based on the condition that they will tender many thousands of pounds of LTL freight to a carrier per week, month or year. I can see little, if any, relationship between cost savings to carriers serving such shippers and the large discounts offered for simply tendering large volumes of traffic. The transportation services provided for Sprouse Reitz are basically the same, yet because we don't have as large a volume of traffic to offer, our rates are higher. Shouldn't rates for similar services be the same to permit fair competition in businesses such as ours?

Another example of misuse of power by the Commission, in its administration of the Act, is that in one stroke, the I.C.C. wiped out a concept which had proven to be essential to the protection of the shipping public ever since the development of the common law in England—namely, the common carrier obligation. First, the I.C.C. commenced routinely issuing certificates to new carriers, which were far broader in scope than the applicant's ability or desire to perform transportation service. Then, it successfully defended this practice before the federal courts on the grounds that carriers were free to disregard their certificates in determining the scope of their common carrier undertaking. Next, it cited these same court decisions in its decision of March 15, 1983, to terminate Ex Parte No. MC-77 (Sub-No. 3), Elimination of Certificates as the Measure of "Holding Out." That decision provides that each carrier may now decide for itself what is economically or operationally impractical and to decline to provide service on the basis of that unilateral decision. By this action the Commission has clearly indicated that it has written off the common carrier obligation as an useful concept.

Some have said that the common carrier obligation was a myth and that the Commission never enforced the obligation. In my view, however, the common carrier obligation used to be very much a reality and we would prefer to have that obligation maintained. For instance, the Commission, in the past, through court action, had prohibited the carriers from selectively cancelling through routes and joint rates on hard-to-handle commodities. In Ex Parte No. MC-77, it prohibited other types of restrictions on through routes and joint rates. Furthermore, the Commission has consistently pressed for legislation which would permit it to mandate the establishment of joint rates. In the 94th Congress, and in every Congress thereafter, the Commission continued to press for such authority. Congress finally granted such authority in the Motor Carrier Act of 1980. This emphasizes to me that Congress recognized the importance of requiring through routes and joint rates to those whose transporation costs or services are in jeopardy.

I submit that the system of collective rates published through the rate bureaus and a fair, reasonable and equitably administered set of laws concerning economic regulation of transportation serves to protect the smaller shipper, such as Sprouse Reitz. Any student of transportation can observe that, historically, transportation was characterized by pervasive discrimination which favored the large and powerful. The legislative history of the Interstate Commerce Act in 1887 shows that the primary complaint giving rise to that legislation was the practice of discrimination in one form or another. There are millions of small businesses in this country, compared to only a few thousand large businesses. In Oregon, for example, the small shippers are numerically far more important that the large businesses (our latest statistics indicate that there are 64,894 small businesses in Oregon compared to 2,051 large businesses), yet it is the large businesses which have the economic clout to demand and obtain favorable concessions from carriers if we were in a totally unregulated transportation environment. In fact, as I indicated previously, that is exactly what we are finding today under I.C.C.'s Saissez faire philosophy of non-administration. My company does not wish to revert to a position of sanctioned discrimination in transporation rates and services.

During the past ten years, I frequently have been in close association with some of the nation's largest retail shippers through various traffic professional associations to which I belong. My contracts with these giants of the industry have enabled me to exchange information and to observe the tremendous advantages conferred by their size. These large shippers have the advantage of alternatives, such as private carriage and contract carriage, in addition to their economic leverage. On the other hand, companies such as Sprouse Reitz are nearly 100 percent dependent upon common carrier service. We depend upon adequate service at reasonable rates in order to operate our stores. Common carrier transportation is a public utility upon which we rely for our continued existence. To remove the ability of carriers and shippers to discuss rates collectively, or to unleash all transportation entities to pursue their own interest however they see fit, is to simply authorize unfair competition and the destruction of small business in small communities, because of their inability to negotiate with hundreds or thousands of carriers. In my opinion, there is no better way to aid the small shipper and small business generally than to encourage open communication and to maintain a reasonably stable system of determining and policing equitable freight rates and services of our nation's common carrier industry.

It is my observation that much of the talk about deregulating the motor carrier industry comes from officials in the Department of Transportation, Department of Justice, the Council of Economic Advisors, and the Federal Trade Commission, all of whom are far-removed from the working intricacies of our transportation network. I submit that these officials should stop talking to each other about their economic theories, and instead should listen to the people whom they are representing—the users of a system of transportation which works very effectively when properly regulated.

Without a doubt, the members of this Congress know better than I that federal regulation of some activities, such as interstate commerce, is required to foster and protect free enterprise throughout the nation. Reliability and orderly common carrier transportation, under the scrutiny of the Interstate Commerce Commission and subject to the Interstate Commerce Act, is one of those activities which are vital to the continued success of thousands of small businesses. Let those of us who need this system, including the collective ratemaking network of joint rates, keep it. Shippers with economic clout who claim they don't need it may pursue their own interest in whatever way they see fit, subject to the I.C.C. Act's prohibition against unreasonable or discriminatory rates.

Much emphasis is being placed on "market place competition" among carriers. But, we must not lose sight of the effect of the common carrier system upon our overall economy. Small shippers who are dependent upon common carrier service need the assistance of U.S. Regulatory Agencies to assure their continued ability to compete in the marketplace without fear of predatory or discriminatory practices by industry giants.

I urge this subcommittee to do whatever it can to reassert the rightful power (and duty) of Congress to regulate interstate commerce. The 1980 Act is law, and the regulatory agency charged with the administration of that law should be held accountable for its enforcement.

Most of all, this subcommittee should be extremely cautious about entertaining new legislation which would totally eliminate economic regulation of surface transportation. Maintaining and enforcing some degree of regulation will prevent the possible collapse of small businesses across this country.

SPROUSE-REITZ CO., INC.

Store number	City	ZIP code	Address	State	Population
District No. 1					
135	Camas	98607	337 North Fourth Street	WA	5,681
136	Stayton	97383	Stayton Plaza Shopping Center, 987 First Street	OR	4,396
137	Clatskanie	97016	Evergreen Shopping Center, US 30 & Mist Highway	OR	1,648
138	Silverton	97381	Silver Creek Shopping Center, 410 McClaine Street	OR	5,168
139	Woodburn	97071	Fairway Plaza Shopping Center, 2287 Country Club Road.	OR	11,196
140	Lincoln City	97367	Miracle Village Shopping Center, 4069 Logan Road	OR	5,469
141	Hillsboro	97123	374 South First Street	OR	27,664
142	Seaside	97138	711 Broadway	OR	5,193
143	Tigard	97223	12242 S. W. Scholls Ferry Road	OR	14,286
144	Portland	97229	13525 N. W. Cornell Road	OR	366,383
145	Molalla	97038	103 Robbins Street	OR	2,992
146	McMinnville	97128	1401 N. Highway 99W	OR	14,080
147	Salem	97305	3344 Lancaster, N.E.	OR	89,233
148	Canby	97013	1055 S. W. First Avenue	OR	7,659
149	Salem	97303	660 Chemewa Road North	OR	89,233
150	Portland	97203	8310 N. Ivanhoe Street	OR	366,383
151	Newport	97365	2312 N. Coast Highway	OR	7,519
153	Forest Grove	97116	2828 Pacific Avenue	OR	11,499
154	Clackamas	97015	19980 S. E. Hwy. 212	OR	1,000
155	Sandy			OR	2,905
District No. 2					
203	Oxnard	93030	201 West Gonzales Road	CA	108,195
205	Arvin	93203	240 Bear Mountain Blvd.	CA	6,863
208	Morro	93442	750 Quintana Road	CA	9,064
209	Fillmore	93015	363 Central Avenue	CA	9,602
211	Port Hueneme	93041	2571 Ventura Road	CA	17,803
212	Lake Isabella	93240	6050 Lake Isabella Blvd. P.O. Box V	CA	900
213	Pismo Beach	93449	Five Cities Shopping Center	CA	5,364
217	Oxnard	93030	225 West Pleasant Valley Road	CA	108,195
223	Wasco	93280	908 Seventh Street	CA	9,613
227	Camarillo	93010	2404 Los Posas Road	CA	37,732
228	Lancaster	93534	Lancaster Square Shopping Center, 44225 Tenth Street West.	CA	48,027
230	Ridgecrest	93555	128 North China Lake Blvd.	CA	15,929
231	Newbury Park (Thousand Oaks).	91320	Casa Conejo Plaza, 727 Wendy Drive	CA	77,797
232	Lancaster	93535	1025 East Avenue I	CA	48,027
233	Palmdale	93550	244 East Palmdale Blvd.	CA	12,277
234	Atascadero	93422	7175 El Camino Real	CA	15,930
236	Sylmar (Los Angeles)	91340	12681 Glenoaks Blvd.	CA	2,966,763
District No. 3					
302	Lebanon	97355	2562 South Santiam Hwy.	OR	10,413
307	Coos Bay	97420	540 South Fourth Street	OR	14,424
310	Reedsport	97467	Umpqua Shopping Center, P.O. Box 86	OR	4,984
312	Grants Pass	97526	925 N.E. "D" Street	OR	14,997
317	Sweet Home	97386	Santiam Plaza Shopping Center, 1550 "M" Street	OR	6,921

SPROUSE-REITZ CO., INC.—Continued

Store number	City	ZIP code	Address	State	Population
323	Florence	97439	1670 Highway 126, P.O. Box 266	OR	4,411
326	Medford	97501	2349 Jacksonville Hwy.	OR	39,603
328	Harbor	97415	Brookings Harbor Shopping Center, P.O. Box 2067	OR	500
333	Ashland	97520	1668 Ashland Street	OR	14,943
334	Rogue River	97537	506 East Main Street	OR	1,308
335	North Bend	97459	Village Shopping Center	OR	9,779
336	Crescent City	95531	933 Northcrest Drive	CA	3,099
348	Eugene	97402	1162 Highway 99 North	OR	105,624
350	Prineville	97754	250 West Third St	OR	5,276
District No. 4					
404	Incline Village	89450	930 Tahoe Blvd., P.O. Box BR	NV	3,500
406	Winnemucca	89445	1500 W. Third Street	NV	4,140
408	Yerington	89447	18 North Main Street	NV	2,021
415	Susanville	96130	1618 Main Street	CA	6,520
420	Carson City	89701	1344 Stewart Street	NV	32,022
422	Lovelock	89419	1015 Dartmouth Avenue, P.O. Box 327	NV	1,680
424	South Lake Tahoe	95731	Intersections Hwys. 50 & 89, P.O. Box 8914	CA	20,681
425	Emmett	83617	1017 South Washington	ID	4,605
426	Ontario	97914	1453 S.W. Fourth Avenue	OR	8,814
427	Carson City	89701	2025 N. Carson Street	NV	32,022
429	Rupert	83350	309 "F" Street	ID	5,476
430	Ely	89301	295 Pioche Highway	NV	4,882
431	Meridian	83642	32 East Fairview Avenue	ID	6,658
432	Hawthorne	89415	1085 U.S. Highway 95, P.O. Box 58	NV	5,000
433	Quincy	95971	30 East Main Street	CA	2,500
434	Fallon	89406	1875 W. Williams Street	NV	4,262
435	Jerome	83338	1120 South Lincoln	ID	6,891
436	Elko	89801	2580 Idaho St	NV	8,758
District No. 5					
501	Auburn	95603	875 Lincoln Way, P.O. Box 792	CA	7,540
503	Sacramento	95823	6640 Valley Hi Drive	CA	275,741
505	Grass Valley	95945	117 Neal Street	CA	6,697
506	Auburn	95603	415 Highway 49	CA	7,540
507	Sacramento	95842	5705 Hillsdale Blvd	CA	275,741
516	Marysville	95901	1470 North Beale Road	CA	9,898
517	Walnut Creek	94596	2923 Ygnacio Valley Road	CA	53,643
518	Elk Grove	95624	8771 Elk Grove Blvd	CA	3,721
523	Yuba City	95991	769 Colusa Avenue	CA	18,736
525	Martell	95654	2080 W. Highway 88	CA	200
527	Pittsburg	94565	2921 Railroad Avenue	CA	33,034
528	Citrus Heights	95610	6085 Greenback Lane	CA	25,100
529	Vallejo	94590	Seven Rancho Square	CA	80,188
530	Dixon	95620	1025 North Adams Street	CA	7,541
531	Sacramento	95826	9153 Kiefer Blvd	CA	275,741
532	West Sacramento	95691	1264 W. Capitol Avenue	CA	12,002
533	Benicia	94510	Solano Square Shopping Center	CA	15,376
534	Vallejo	94590	96 Springstown Shopping Center	CA	80,188
535	Folsom	95630	685 E. Bidwell Street	CA	11,003
District No. 6					
601	Clearlake	95422	33 Olympic Street, Box No. E	CA	2,836
604	....do	95422	15250 Lake Shore Drive, P.O. Box 3520	CA	2,836
606	San Pablo	94806	16330 San Pablo Avenue	CA	19,750
607	Santa Rosa	95405	2747 Yulupa Avenue	CA	83,205
612	Healdsburg	95448	515 Healdsburg Avenue	CA	7,217
617	Sonoma	95476	459 West Napa Street	CA	6,054
620	Petaluma	94952	120 Kentucky Street	CA	33,834

SPROUSE-REITZ CO., INC.—Continued

Store number	City	ZIP code	Address	State	Population
621	St. Helena	94574	1111 Main Street	CA	4,898
624	Santa Rosa	95405	102 Calistoga Road	CA	83,205
627	Willits	95490	150 Main Street	CA	4,008
628	Fort Bragg	95437	150 S. Main Street	CA	5,019
629	Sebastopol	95472	218 N. Main Street	CA	5,500
630	Pleasanton	94566	Amador Shopping Center, 1677 Santa Rita Road	CA	35,160
631	Livermore	94550	Granada Shopping Center, 1879 Holmes Street	CA	48,349
632	Oakland	94602	3439 Fruitvale Avenue	CA	339,288
633	San Lorenzo	94580	1340 Bockman Road	CA	23,200
634	Alameda	94501	1537 Webster Street	CA	63,852
636	Lakeport	95453	949 11th Street	CA	3,675
District No. 7					
701	Carmel	93921	536 Carmel Rancho Shopping Center	CA	4,707
703	Marina	93933	215 H. Reservation Road	CA	20,647
706	Scotts Valley	95066	224 Mt. Hermon Road	CA	6,891
708	Capitola	95010	1501A—41st Avenue	CA	5,080
709	Pacific Grove	93950	588–590 Lighthouse Avenue	CA	15,755
711	Seaside	93955	1201 Fremont Blvd.	CA	36,567
715	Carmel	93921	Ocean & Mission Streets P.O. Box 1450	CA	4,707
717	Boulder Creek	95006	Central Avenue, P.O. Box "I"	CA	4,000
724	Morgan Hill	95037	Nob Hill Shopping Center	CA	17,060
725	King City	93930	809 Broadway	CA	5,495
726	San Francisco	94112	950 Geneva Avenue	CA	678,974
727	San Jose	95119	7098 Santa Teresa Blvd.	CA	636,550
728	Foster City	94404	Marlin Cove Shopping Center 1090 Foster City Blvd.	CA	23,287
730	Greenfield	93927	550 Walnut Avenue P.O. Box 1497	CA	4,181
731	Morgan Hill	95037	225 Tenant Station	CA	17,060
District No. 8					
801	Cathedral City	92234	69–030 Highway 111	CA	3,640
804	Palm Desert	92260	72–885 Highway 111	CA	11,801
810	Holtville	92250	520 Holt Avenue	CA	4,399
812	Laguna Beach	92651	239 Broadway	CA	17,860
813	Fallbrook	92028	1071 S. Main Street	CA	9,000
814	San Ysidro	92073	197 Virginia Avenue	CA	875,504
816	Coachella	92236	49–807 Harrison Street	CA	9,129
820	Chula Vista	92011	265 East Orange Avenue	CA	83,927
829	San Juan Capistrano	92675	32–151 Camino Capistrano	CA	18,959
830	Hemet	92343	1287 South State Street	CA	23,211
831	Sunnymead	92388	23–931 Sunnymead Blvd., P.O. Box 638	CA	6,708
833	San Diego	92128	11985 Bernardo Plaza Drive	CA	875,504
835	San Marcos	92069	125 South Rancho Santa Fe Road	CA	17,479
838	Oceanside	92056	3516 College Blvd., P.O. Box 638	CA	76,698
839	San Diego	92124	10631 Tierrasanta Blvd.	CA	875,504
840	Perris	92370	440 East Fourth Street	CA	6,740
841	Lake Elsinore	92330	31944 Mission Trail Road	CA	5,982
842	Santee	92071	9866 Magnolia	CA	37,400
844	Yucca Valley	92284	57220—29 Palms Hwy.	CA	4,300
845	Sun City	92381	27350 Sun City Blvd., P.O. Box 519	CA	5,519
District No. 9					
902	Tucson	85715	7810 E. Wrightstown Road	AZ	330,537
904	Safford	85546	402 Main Street	AZ	7,010
906	Tucson	85706	529 West Valencia Road	AZ	330,537
911	Tucson	85705	16 West Grant Road	AZ	330,537
912	Peoria	85345	9796 West Peoria Avenue	AZ	12,251
914	Superior	85273	210 West Main Street, P.O. Box S	AZ	4,600
917	Mesa	85201	1446 East Main Street	AZ	152,453

SPROUSE-REITZ CO., INC.—Continued

Store number	City	ZIP code	Address	State	Population
918	Phoenix	85021	3532 West Northern Avenue	AZ	764,911
919	Tucson	85704	6026 North Oracle Road	AZ	330,537
921	Chandler	85224	1048 North Arizona Avenue	AZ	29,673
923	Safford	85546	1926 W. Thatcher Blvd	AZ	7,010
924	Phoenix	85023	3541 W. Thunderbird Road	AZ	764,911
930	Phoenix	85017	5015 N. 35th Avenue	AZ	764,911
932	Phoenix	85035	5118 W. McDowell Road	AZ	764,911
934	Coolidge	85228	1030 N. Arizona Blvd	AZ	6,851
935	Globe	85501	Hwy. 60 & Central Heights Road, P.O. Box 1541	AZ	6,708
937	Scottsdale	85258	7337 Via Paseo Del Sur	AZ	88,364
938	Wickenburg	85358	Hwy. 60-70 & Vulture Mine Road, P.O. Box 1267	AZ	3,535
941	Apache Junction	85220	725 West Apache Trail, P.O. Box 460	AZ	9,935
942	Tucson	85705	3925 N. Flowing Wells	AZ	330,537
District No. 10					
1001	La Habra	90631	530 West La Habra Blvd	CA	45,232
1006	Temple City	91780	9569 East Las Tunas Drive	CA	28,972
1008	Big Bear Lake	92315	735 Stocker Road, P.O. Box 1669	CA	2,800
1010	Long Beach	90806	516 West Willow Street	CA	361,334
1013	Ontario	91761	208 West "G" Street	CA	88,820
1022	Corona	91720	710 Lincoln Blvd	CA	37,791
1029	Big Bear Lake	92315	42168 Big Bear Blvd., P.O. Box 6847	CA	2,800
1031	Chino	91710	4030 Carbon Canyon Road	CA	40,165
1032	Rancho Cucamonga	91701	8776 Baseline Street	CA	55,250
1033	Grand Terrace	92324	22455 Barton Road	CA	8,498
1034	Chino	91710	11991 Central Avenue	CA	40,165
1035	South Gate	90280	9775 Otis Street	CA	66,784
1036	Highland	92346	3663 E. Highland Avenue	CA	12,300
1037	Barstow	92311	1260 East Main Street	CA	17,690
1038	Apple Valley	92307	21679 Yucca Loma Road	CA	7,500
1039	Hesperia	92345	15759 Main Street	CA	5,700
1040	Orange	92667	1807 East Chapman Street	CA	1,931,570
1041	Anaheim	92804	925 South Brookhurst Avenue	CA	221,847
District No. 11					
1101	Guymon	73942	1106 North Main	OK	8,492
1102	Farmington	87401	714 West Main	NM	30,729
1107	Farmington	87401	Palmer Plaza Shopping Center, 1001 West Broadway.	NM	30,729
1108	Albuquerque	87123	128 Juan Tabo, N.E	NM	331,767
1112	Amarillo	79109	202 Puckett Plaza Shopping Center, 3440 Bell	TX	149,230
1119	Santa Rosa	88435	123 Fourth Street	NM	2,469
1125	Gallup	87301	1106 East 66th Avenue	NM	18,161
1128	Farmington	87401	Dustin Avenue & Amdsden	NM	30,729
1131	Gallup	87301	405 West Aztec	NM	18,161
1132	Albuquerque	87109	Far North Shopping Center, 6300 "B" San Mateo Blvd., N.E.	NM	331,767
1133	Socorro	87801	905 California Street, N.W	NM	7,576
1134	Raton	87740	1271 South Second Street	NM	8,225
1035	Gallup	87301	806 North 666 Hwy	NM	18,161
1036	Rio Rancho	87124	1320 Rio Rancho Dr	NM	5,000
District No. 12					
1202	Modesto	95351	452 Paradise Road	CA	106,105
1203	Newman	95360	1321 "O" Street, P.O. Box 455	CA	2,785
1207	Sonora	95370	167 South Washington Street	CA	3,239
1208	Kingsburg	93631	1440 Draper Street	CA	5,115
1209	Ceres	95307	2531 Whitmore Avenue	CA	13,281
1210	Modesto	95350	2400 Coffee Road	CA	106,105

SPROUSE-REITZ CO., INC.—Continued

Store number	City	ZIP code	Address	State	Population
1213	Sanger	93657	1831 Academy	CA	12,558
1214	Modesto	95351	1303 Yosemite Blvd	CA	106,105
1216	Manteca	95336	1080 N. Main	CA	24,925
1217	Hanford	93230	110 South 11th Avenue	CA	20,958
1227	Selma	93662	3726 McCall	CA	10,942
1228	Fresno	93710	6048 North First	CA	218,202
1229	Clovis	93612	534 Shaw Avenue	CA	33,021
1231	Oakdale	95361	870 N. Yosemite	CA	8,474
1232	Coalinga	93210	201 West Polk	CA	6,593
1233	Lemoore	93245	1164 N. Lemoore Avenue	CA	8,832
1234	Altaville	95221	185 South Main	CA	2,302
1235	Atwater	95301	451 Bellevue	CA	17,530
1236	Kerman	93630	15070 Whitesbridge Road	CA	4,002
1237	Turlock	95380	2080 East Canal Drive	CA	26,291
1238	Chowchilla			CA	5,122
1240	Exeter			CA	5,619
1241	Lindsay			CA	6,924
District No. 13					
1302	Midway	98032	23418 Pacific Hwy., South	WA	23,152
1303	Vashon	98070	17645—100th Avenue., S.W., P.O. Box 407	WA	200
1305	Bellingham	98225	Park Manor Center, 3230 Northwest Avenue	WA	45,794
1307	Montesano	98563	201 Pioneer Avenue, East	WA	3,247
1308	Port Angeles	98362	150 Port Angeles Plaza, Hwy. 101 & Golf Course Road.	WA	17,311
1309	Stanwood	98292	8809—271st, N.W., P.O. Box 216	WA	2,744
1310	Kirkland	98033	14442—124th Avenue, N.E.	WA	18,779
1311	Gig Harbor	98335	4805 Point Fosdick Dr., N.W., P.O. Box 339	WA	2,429
1312	Tumwater	98501	400 Cleveland	WA	6,705
1313	Port Townsend	98368	1133 Water Street	WA	6,067
1319	Oak Harbor	98277	1286 West Pioneer Way	WA	12,271
1320	Oak Harbor	98277	1487 Midway Blvd	WA	12,271
1324	Lynden	98264	125 N. 17th Street	WA	4,022
1325	Marysville	98270	1346 State Street	WA	5,080
1326	Port Orchard	98366	Hi-Point Shopping Center, 1029 Bethel Avenue	WA	4,787
1327	Mount Vernon	98273	525 E. College Way	WA	13,009
1328	Auburn	98002	1241 Auburn Way North	WA	26,417
1330	Snohomish	98290	205 Pine Street	WA	5,294
1331	Shelton	98584	414 West Franklin Street	WA	7,629
1332	Friday Harbor	98250	355 Spring Street, P.O. Box 1421	WA	1,200
District No. 14					
1403	Corning	96021	2026 Solano Street	CA	4,745
1409	Red Bluff	96080	330-336 Walnut Street	CA	9,490
1411	Weed	96094	293 Main Street	CA	2,879
1412	Anderson	96007	2611 Balls Ferry Road	CA	7,381
1415	McKinleyville	95521	1520 City Center Road, P.O. Box 2038	CA	2,000
1417	Paradise	95969	Paradise Shopping Center, 6848-P Skyway Blvd	CA	22,571
1420	Redding	96002	2951 Churn Creek Road	CA	41,995
1424	Orland	95963	35 East Walker Street	CA	3,976
1425	Mount Shasta	96067	128 Morgan Way	CA	2,837
1426	Burney	96013	1586 Main Street, Drawer AC	CA	2,190
1428	Arcata	95521	5000 Valley West Blvd	CA	12,338
1429	Fortuna	95540	721 Fortuna Blvd	CA	7,591
1430	Gridley	95948	1590 Hwy. 99E	CA	3,982
1431	Weaverille	96093	1240 Hwy. 299W, P.O. Box 339	CA	1,489
District No. 15					
1501	Chelan	98816	230 W. Manson Road	WA	2,802

SPROUSE-REITZ CO., INC.—Continued

Store number	City	ZIP code	Address	State	Population
1505	Kennewick	99336	Highland Center, 129 N. Ely	WA	34,397
1507	Othello	99344	511 Main Street	WA	4,454
1509	Coeur d'Alene	83814	101 Best Avenue	ID	20,054
1512	Hamilton	59840	201 South Second Street, P.O. Box 908	MT	2,661
1514	Sandpoint	83864	100 Cedar Street	ID	4,460
1515	Burns	97720	362 North Broadway	OR	3,579
1517	John Day	97845	633 West Main	OR	2,012
1518	Colville	99114	762 South Main Street	WA	4,510
1522	Moses Lake	98837	Grant County Mall, 617 S. Pioneer	WA	10,629
1523	Yakima	98902	2606 West Nob Hill Blvd.	WA	49,826
1524	Yakima	98902	5605 Summitview Avenue	WA	49,826
1527	Ephrata	98823	314 Basin Street, S.W	WA	5,359
1528	Old Town [1]	99156	Via Newport, Washington	ID	161
1528	Old Town [1]	83804	Via Blanchard, Idaho	ID	161
1529	La Grande	97850	Wallowa Lake Road, Grande Ronde Plaza	OR	11,354
1530	Ellensburg	98926	404 North Pine Street	WA	11,752
1531	Pasco	99301	1404 North 20th Street	WA	17,944
1533	Missoula	59801	1900 Brooks	MT	33,388
1534	Hermiston	97838	960 Hwy. 395 South	OR	9,408
District No. 16					
1601	Salt Lake City	84117	2355 East 3900 South	UT	163,033
1602	Sandy	84070	9471 South Seventh East	UT	51,022
1603	Preston	83263	74 South State Street, P.O. Box 348	ID	3,759
1605	Moab	84532	50 South Main Street	UT	5,333
1607	Provo	84601	65 North Fifth West	UT	73,907
1611	American Fork	84003	53 West Main Street	UT	12,417
1613	Magna	84044	3561 South 8400 West	UT	8,600
1622	Provo	84601	480 North Ninth East	UT	73,907
1626	Kearns	84118	4727 South 40th West	UT	17,000
1629	Heber City	84032	476 North Main Street	UT	4,362
1630	Clearfield	84015	399 South State Street	UT	17,982
1631	Salt Lake City	84107	4151 South Redwood Road	UT	163,033
1632	Idaho Falls	83401	1568 East 17th Street	ID	39,590
1633	Rock Springs	82901	1315 Dewar Drive	WY	19,458
1634	Blackfoot	83221	Parkway Drive, 39 Riverside Plaza	ID	10,065
1636	Centerville	84014	94 East Page's Lane	UT	8,069
1637	Salt Lake City	84116	783 N. Redwood Road	UT	163,033
1638	Vernal	84078	690 W. Main Street	UT	6,600
1639	Roosevelt	84066	690 E. Second Street North, P.O. Box 1547	UT	3,842
1640	Green River	82935	Flaming Gorge Shopping Center, 410 South Uinta Drive.	WY	12,807
1641	Montpelier	83254	152 South Fourth	ID	3,107
1642	Price	84501	1161 East Main Street	UT	9,086
1644	Richfield	84701	310 South Main Street	UT	5,482
District No. 17					
1704	Prescott	86301	1511 West Gurley	AZ	20,055
1709	Needles	92363	925 Front Street	CA	4,120
1710	Payson	85541	P.O. Box 248 (No street address)	AZ	5,068
1720	Springerville	85938	Corner Hwys. U.S. 60 & 180, P.O. Box 299	AZ	1,452
1723	Las Vegas	89109	5200 Boulder Highway	NV	164,674
1726	North Las Vegas	89030	3262 Las Vegas Blvd. North	NV	42,739
1727	Lake Havasu City	86403	1984 N. McCulloch Blvd	AZ	15,737
1728	Kingman	86401	3127 Stockton Hill Road	AZ	9,257
1730	Blythe	92225	661 West Hobsonway	CA	6,805
1732	Cedar City	84720	594 South Main Street	UT	10,972
1733	Show Low	85901	Deuce of Clubs Street, P.O. Box W	AZ	4,298
1734	Las Vegas	89109	4856 S. Eastern Avenue	NV	164,674
1735	Winslow	86047	1539 N. Park Drive	AZ	7,921

Footnote at end of table.

SPROUSE-REITZ CO., INC.—Continued

Store number	City	ZIP code	Address	State	Population
1736	Holbrook	86025	1515 E. Navajo Blvd	AZ	5,785
1737	Page	86040	616 Elm Street, P.O. Box 1595	AZ	4,907
1738	Riviera	86442	1751 Hwy. 95	AZ	2,500
1739	Parker	85344	133 West Riverside Drive	AZ	2,542
1740	Cottonwood	86326	Babbit Plaza, 1427 E. Hwy. 89A	AZ	4,550
1741	Prescott	86312	Hwy. 69 & Roberts Road, P.O. Box 5596 Agua Fria	AZ	20,055
1742	Pinetop	85935	White Mountain Village, Highway 260, P.O. Box 460-D.	AZ	1,500
District No. 18					
1805	El Paso	79924	Unit No. 20, Rushfair Center	TX	425,259
1811	Midland	79701	3205 N. Midkiff Road	TX	70,525
1813	Truth or Consequences	87901	425 Main Street	NM	5,219
1815	Hatch	87937	P.O. Box 277 (No Street Address)	NM	1,028
1816	Silver City	88061	Silver Crest Center, 1401 Silver Heights Blvd	NM	9,887
1817	Pecos	79772	2024 South Eddy Street	TX	12,855
1819	El Paso	79907	700 N. Zaragosa Road, Bldg. No. 11	TX	425,259
1820	Portales	88130	503 West 18th Street	NM	9,940
1821	Brownfield	79316	121 West Hill Street	TX	10,387
1822	Monahans	79756	407 South Main Street	TX	8,397
1823	Denver City	79323	303 West Fourth	TX	4,704
1824	Las Cruces	88001	1265 South El Paseo Road	NM	45,086
1826	El Paso	79925	3333-C North Yarbrough Drive	TX	425,259
1827	Carlsbad	88220	803 West Pierce	NM	25,496
1828	El Paso	79936	1840 Lee Trevino Drive	TX	425,259

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[1] Store 1528 Old Town, Idaho has two addresses: (1) Shipments go to "Via Newport, Washington" address. (2) U.S. Mail goes to "Via Blanchard, Idaho" address.

Mr. ANDERSON. Please proceed.

TESTIMONY OF JERRY WHITE, J. WHITE & ASSOCIATES, SPOKANE, WASH.; EDWARD S. PAULL, PRECISION STEEL WAREHOUSE, CHICAGO, ILL.; AND WILLIAM VOELLER, SPROUSE REITZ CO., PORTLAND, OREG.

Mr. WHITE. I appreciate the opportunity you have afforded me here and I would like to start by stating that I am a transportation consultant in Spokane, Wash. Essentially I represent the small business type of shipper. On this panel are two other traffic managers from smaller type businesses, but those businesses are at least large enough to have a traffic manager. My function is to represent many businesses who are not even large enough to afford in-house transportation expertise.

You just heard from a panel representing what I consider big business, national corporations, certainly respectable gentlemen and fine organizations. I am formerly a member of the National Industrial Transportation League when it was called the Traffic League and I am currently a member of NASSTRAC.

Nevertheless, I do not believe these organizations really represent the shipping public in this country. The statement was thrown out that the NIT league represents 80 percent of the tonnage that is moved. That may well be. I know well they do not represent 20 percent of the shippers in this country by number of shippers, at least.

I think to state the problem succinctly, the most important problem that we face, the shipper people in this country, is rampant, unreasonable, and unjust discrimination that is perpetrated by the carriers at the, I would say, really, encouragement of the present Interstate Commerce Commission.

It appears to me this Commission is determined to ignore the express wishes of Congress in administrating the act. They are fostering discrimination to the detriment of the smaller shipper, and certainly this congressional committee should do something about it.

As I read the Motor Carrier Act of 1980, there was no change made in section 10741(b), which prohibits unreasonable discrimination, and I quote, in part: "A common carrier may not subject a person, place, port or type of traffic to unreasonable discrimination."

As I see it, as the ICC presently administers the act, even the rankest discrimination does not appear to be considered unreasonable. The Commission ignores and actually encourages most flagrant types of discrimination. To the best of my knowledge, no tariff has been rejected as discriminatory since the Commission rejected named shipper publications back in 1981. Restrictive tariffs are filed daily that are totally discriminatory and in principle perform the same function as bid rigging through restrictive specifications in the Federal procurement process. Simply a means of restricting application.

I have here with me a copy of a tariff publication that I negotiated with a general commodities carrier that grants a private public-utility company in Spokane, Wash., a flat out 20-percent discount. It only applies to the private public-utility company. It does not apply to a public, public-utility company. Obvious discrimination, and yet encouraged as free market pricing by the present ICC.

I also have examples with me of what we call kick back discounts, which another gentleman on this panel will discuss further. I am greatly concerned by price discrimination solely on account of corporate clout. It is obviously unreasonably discriminatory, but is condoned by the ICC. The bigs get all the advantage and those with less clout suffer the consequences in excess charges for essential service.

I am aware of clout discounts up to 30 percent, and granted simply because a particular shipper is a member of a corporate family with no consideration whatsoever for the economics of a particular shipping point, product moving, or volumes or whatever.

Commission control is mandated by the act and history, but nothing is being done to control the industry. I read in the press that Chairman Taylor testified in a Senate hearing to the effect that the ICC was nothing but a massive paper shuffle. Unfortunately, I agree; that is all it is. That is not what it should be, but that is really all it is. The situation is bad, and it is rapidly getting worse.

The Commission appears to be doing all possible to subvert collective ratemaking in favor of free competition. I am not here to debate the collective ratemaking issue, but it must be admitted that the collective process fosters business in the sunshine, and if there is discrimination, it is up front for all to see and for those injured thereby to protest.

The Commission fosters business in the dark, which is the ideal spawning ground for unjust discrimination.

In summary, Congress kept collective ratemaking and made no change in discrimination provisions in the process of passing the Motor Carrier Act of 1980. It was the intent that we continue business in the sunshine. As administered, we are hiding everything and fostering unreasonable discrimination in the process. It is bad today, but headed for far worse. I would urge the committee to foster some stringent statutory directives to force the Interstate Commerce Commission to administer the act as intended and written.

Thank you.

Mr. **ANDERSON**. Mr. Paull.

Mr. **PAULL**. Thank you, Mr. Chairman, Mr. Smith.

My name is Ed Paull. I am the traffic manager of Precision Steel Warehouse, Inc. Precision Steel is a steel service center located in Franklin Park, Ill., which is in the Chicago commercial zone.

We are an approximately $40 million a year concern, which would, I believe, put us in the realm of a small to moderate size business. We ship an average of 190 to 200 shipments a day, most of which move on LTL class rates via motor common carrier.

It is our purpose in appearing before you to express our opinion that the conduct of the Interstate Commerce Commission in implementing the Motor Carrier Act of 1980 has been shameful. It has resulted in discriminatory practices and the impact of the Commission's disregard of the intent of Congress has been and will be felt most harshly by small and moderate size businesses such as ours.

The Motor Carrier Act, after thoughtful consideration was passed by the Congress to help improve the transportation environment in this country. It in no way was intended to abrogate the antidiscrimination provisions of the original act. Congress intended that the system prevent preferential and discriminatory practices.

However, by its interpretation of the act, the Commission has decided that large, powerful shippers can receive what we believe to be discriminatory and preferential treatment on shipments which under identical circumstances are not available to all shippers, such as Precision Steel.

For example, attached to my testimony you will see a routing order issued by a major corporation in this country. This indicates that the transportation of the identical shipment from the same shipper to the same consignee under the exact same circumstances will result in significant savings if billed to this corporation.

However, if we were to pay this freight bill, we could not take advantage of any significant savings. This is clearly discriminatory since the discount being offered in no way is associated with any cost savings to the carrier. Congress did not intend that the illegal rebates be allowed, yet the Commission has sanctioned payments of the rebates to shippers and receivers on movements of freight to a party other than that bearing the freight bills.

For example, if we were to make a shipment to a customer in Grand Rapids, Mich., and that customer were responsible for the freight charges, under the Commission's formal, official positions, carriers can rebate to me, the shipper, a portion of the freight charges without the knowledge of the party paying these freight bills. And this is an official position of the Interstate Commerce Commission.

It has been offered to our company on many occasions by many carriers, and we have refused. We feel this is indefensible conduct and we certainly think it is unethical. There are a number of other instances where these practices profit large shippers and are not available to smaller shippers of our size.

The most disturbing point is that the Commission sanctions these practices. Tariffs containing these discriminatory practices are never suspended or investigated. They have made it clear that they are proper as long as they are published.

In previous testimony today and through the oversight hearings, you have heard about competition and savings to the public under the present Commission proceedings, the shocking testimony of Dr. Silberman; in a 6-month period, an increase from 50- to 83-percent market share from the 10 largest carriers.

I am not a Government expert or an attorney, but I can imagine what would be going on at the Department of Justice if this was happening in any other industry. In 6 months, the top 10 have taken over 83 percent of the business in this country. Is this competition? Is this beneficial to shippers? What is going to happen at the end of this year or next year? How many carriers will there be left? Who will be interested in my freight, and what will I have to pay to move it?

Our concern is what the cost is going to be if these policies are implemented and continue to be implemented by the Commission. There is a definite cost factor involved to small and medium size businesses who do not have the resources or the manpower to actually go through the mountains and mountains of tariffs that are becoming necessary even today. It is essential that these concerns of smaller businesses be heard, and for this we are very grateful that we have had this opportunity.

The cost to small and medium size businesses to compete is becoming even more expensive. And our main question we are asking is, what will it cost and who is going to pay the bill? I will not argue the theory with you.

The Motor Carrier Act of 1980 does not change the basic precepts of transportation. Rates still must be just and reasonable, nonpreferential and nondiscriminatory. The act was not intended to create jobs, yet this is what is going to happen.

Gentlemen, we need your help. We thank you for listening to us. I sincerely thank you for myself and my employer for this opportunity, and we are glad that we have had a chance to have a true voice on Capitol Hill. I ask, in your deliberations, that you consider us and above all, I ask that you see that the Interstate Commerce Commission be required to honor the antidiscrimination and other standards of the act which you approved in 1980.

If necessary, we must change the law to give more stringent statutory directives to this what we consider to be an irresponsible Commission.

Thank you very much.

Mr. **Anderson**. Thank you, Mr. Paull. Mr. Voeller.

Mr. **Voeller**. My name is William L. Voeller. I am the traffic manager for Sprouse-Reitz Co. of Portland, Oreg.

I wish to thank you for this opportunity to appear before you today. Sprouse-Reitz Co. is a retail chain of 330 general merchandise variety stores located in 12 Western States, as indicated on the listing attached to my statement. Please note that the majority of our stores are located in what I consider to be small towns. I also wish to point out that our type of store must be described as a small variety store operation.

Our stores carry general consumer merchandise, similar to the type one would find in a larger retail operation; however, our stores are very small, and therefore our merchandise lines are restricted in their depth and quantities.

Much of the merchandise is sold in direct, head-to-head competition, in the same towns with some of the country's largest retailers.

My statement describes to you my very serious concern about the future for small companies such as Sprouse-Reitz. There are two major points in my statement that I want to summarize for you today because they are current, and because they are drastic.

First, I want to reinforce the testimony of Mr. White and Mr. Paull with respect to the current discounting of motor carrier rates, and point out the disastrous competitive effects my company is beginning to experience. Large discounts are being extracted from carriers by retail giants based on the condition that they will tender large volumes of freight over a given period of time, from disparate locations.

Sprouse-Reitz cannot qualify for those large discounts because of our lower volume. Obviously, when both Sprouse-Reitz and the retail giant with whom we compete buy the same widget from the same widget company, the discriminatory discount rate places us at a serious competitive disadvantage.

This disadvantage does not result from our being less efficient than our big competitor, but merely from the superior economic power of that big competitor.

Now, it is one thing when a shipper gets a lower rate for offering his shipments in such a manner that the carriers costs are reduced, but that is not what I am talking about. I am talking about existing programs under which variable discounts are being offered, depending upon total volume handled, and where there is no correlation to carrier cost savings that may exist.

The discount here is based upon the bargaining clout of the shipper. The greater the clout, the greater the discount. The ICC has made it clear in several instances that it would be useless to challenge these practices, thereby condoning what I believe to be unfair discriminatory practices.

We are experiencing increasing numbers of circumstances as described here, and this is a deep concern of our company. I believe the ICC is exceeding its authority by refusing to investigate these discount programs, is operating in a manner contrary to the intent of Congress in this respect, and I hope that this subcommittee will take the necessary steps to rectify that situation. It is long overdue.

The other major point I wish to make today is that now, instead of trying to tackle and resolve the problems of discrimination such as I mentioned, the Commission is moving in a direction to aggravate the problem. You have heard testimony from individuals representing shipper groups, concerning collective ratemaking and the removal of antitrust immunity.

My company does not belong to NIT league, to NASSTRAC, to the National Association of Manufacturers, or the Drug and Toilet Preparation Conference. These conferences do not express my company's views on the subject of collective ratemaking. In fact, I personally appeared before the Motor Carrier Ratemaking Study Commission to support continued antitrust immunity and the collective ratemaking system. That was somewhat of a disillusioning experience, I must admit, and I am extremely disappointed with the study commission's final report.

The Interstate Commerce Commission wants now, to effect the elimination of collective ratemaking by imposing a new rule by administration, which would apply to most of my company's shipments, and approximately 90 percent of all shipments made by everyone.

They are also expressing an interest in administratively eliminating all collective ratemaking. There is some question of whether they have the authority to carry out this action, but let me tell you this: From my company's perspective, with the competitive problems that we are facing already, I can only say that if the ICC were to be successful in these latest efforts, the results will be discrimination beyond words to describe.

Thank you again for allowing me this opportunity.

Mr. ANDERSON. Well, thank you very much. I do have some questions, but will have to call a recess so that Members can go vote.

The subcommittee stands in recess.

[Brief recess.]

Mr. ANDERSON. The meeting of the subcommittee will come to order. We have had a little bit of a change in operation here for those of you who may still wish to testify. I am going to try to finish off the questions to the three of you. I have two other witnesses here, Mr. Corber and Mr. Andrews. And they just told us there are going to be two votes right following this, and then, of course, at 5 o'clock we have to go to the "Members Only" briefing on Granada. And I intend to be there.

So we will have to recess again at that time, from, say, 5 until 6:30. I hate to inconvenience you, but there is nothing I can do about it. So, if you do not—if the other witnesses do not want to do it, we can—I will talk to you later. We can make this a matter of the record and do it that way.

Anyway, I do have just a couple of questions here for the gentlemen.

Mr. White, in your statement you say:

> The kick back discount is openly available by some carriers and simply involves a 15, 20, 25 or whatever percent discount to be applied on shipments made on a collect basis with the discount paid to the shipper. The consignee pays full tariff, but the shipper gets a rebate.

In your opinion, is this type of activity in violation of the Elkins act? And if you believe it is, has anyone urged the ICC to begin enforcement action? That is all one question.

Mr. WHITE. I believe it is in violation of the spirit of the Elkins act. I am not a lawyer, but the Commission has specifically accepted this type of tariff provision as a legally filed tariff and it is being done. It came up with one of my clients, and I said, well, you know, it is really a question of your business ethics. Do you want to do this? The traffic manager, the gentleman who had the title of traffic manager of that company determined in his mind that this was perfectly acceptable behavior.

I did not agree, took the matter up to higher management, and they disagreed with their traffic manager and I lost a client. I, myself, felt that this was not legal or ethical. That is how I feel about it personally.

Mr. ANDERSON. In other words, you do not—you say it is a violation of the Elkins act only in spirit? You do not think it is actually a violation of the act?

Mr. WHITE. Well, the carrier is living under the provisions of a legally filed tariff that is on file and accepted by the ICC, and under those circumstances I do not see how we can say following his tariff is illegal. The Commission has accepted it as legal. It is legally filed. Now, it may not be lawful.

Mr. ANDERSON. OK. Mr. Paull, in your opinion, do you believe the discounting practices you refer to in your testimony violate the Elkins act, and if you conclude that they do not violate the Elkins act, do you believe such practices should be considered as violations of the Elkins act?

Mr. PAULL. I am not certain if they can qualify as being illegal under that act. I think they should be. This was challenged, by the way, by the Central States Motor Freight Bureau in docket 35-813, seeking a declaratory order, and the Commission did rule on it and say that this is legal and it is not a violation of that act in their opinion.

Mr. ANDERSON. Thank you. Mr. Voeller, how much traffic does your company ship and receive each year?

Mr. VOELLER. In terms of gross sales?

Mr. ANDERSON. In terms of tonnage, I guess.

Mr. VOELLER. I do not have numbers in terms of tonnage, but the gross sales of our company are approximately $150 million.

Mr. ANDERSON. That will be satisfactory. How much have your transportation costs increased in the last 3 years, and how does that compare to the cost of the merchandise sold by your company?

Mr. VOELLER. Our costs have increased—I am relying on my memory now—probably in the neighborhood of 20 to 30 percent total. Now, relating that to the purchase dollars that we spend is fairly difficult because our terms of sale change. We may do business with one supplier for 1 year on a freight-collect basis; the next business he may be a prepaid vendor, and we do not pay any freight. So it is rather difficult. I think it is better to relate that to our gross sales figure.

Our freight expenses have increased one-half of 1 percent, which does not sound like a great number, but one-half of 1 percent in relation to our annual gross sales.

Mr. ANDERSON. How much has your merchandise gone up in terms of the cost of the transportation of that merchandise?

Mr. VOELLER. I am sorry; I do not know.

Mr. ANDERSON. You could not give that?

Mr. VOELLER. No. I work in traffic and transportation. I am really not familiar with what you are asking.

Do you want me to name a percentage number?

Mr. **Anderson**. Something where we can show some comparison. I think we want to show how this is related to other costs, inflationary costs, or whatever it happens to be.

Mr. **Voeller**. For the years prior to 1980, the way we calculate our freight as a percentage of our purchases, we ran a pretty stable 3.5 to 3.75 percent of freight expenditure to the dollars of purchases.

We are now running close to 4 percent.

Mr. **Anderson**. Four percent. So as the cost of merchandise goes up, your transportation costs would go up.

Mr. **Voeller**. But it is going up disproportionately.

Mr. **Anderson**. Thank you very much, Mr. White, Mr. Paull, and Mr. Voeller for excellent presentations.

Now, Mr. Corber.

Mr. **Corber**. Mr. Chairman, since there is a call to vote, I would like to respectfully request that we come back at 6:30 or if it would be more convenient to the subcommittee I will be here tomorrow, and I would be glad to come back.

Mr. **Anderson**. I am told that we have a similar schedule tomorrow. I think it might be—I would rather come back at 6:30 if it is convenient with both of you. You can make your presentation and we can ask—make you come back, too, at 6:30—so he does not like that.

Mr. **Corber**. Fortunately, both of us live here.

Mr. **Anderson**. All right. At this time we will recess until the hour of 6:30.

[Whereupon, at 4:59 the subcommittee recessed until 6:30 that same day.]

Mr. **Anderson**. The subcommittee will come to order.

We will recognize Mr. Corber, former Commissioner, Interstate Commerce Commission, and now a practicing attorney.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF ROBERT J. CORBER

Mr. Chairman and members of the Subcommittee, my name is Robert J. Corber. I am a practicing attorney in the field of transportation with offices at 1250 Connecticut Avenue, N.W., Washington, D.C. I served as a member of the Interstate Commerce Commission in 1975 and 1976. I served as a member of Division 2 of the Commission which had responsibility for ratemaking matters. I had a substantial role in the report of the Commission in Ex Parte No. 297, Rate Bureau Investigation, 349 ICC 811 (1975). I was a witness before the Motor Carrier Ratemaking Study Commission and served as counsel for the eleven major motor carrier rate bureaus during the proceedings of the Study Commission. My remarks today reflect the continuing interest of the rate bureaus in the legislative and administrative treatment of collective ratemaking.

Introduction

The Motor Carrier Act of 1980 was the hard-won product of a "delicate balance" among the many forces seeking change in the regulation of motor carriers of property. That phrase -- "delicate balance" or such similar term as "fragile compromise" -- was used repeatedly during the markup session on H.R. 6418 and during the floor debate on that legislation. It furnished the major reason for opposing substantive amendments. It is important to add that the balance achieved was more than political. As one member of this Committee who participated in the floor debate put it:

> This bill is a delicate balance between the many diverse interests who have a stake in the outcome, as well as a balance between a totally free market and necessary Federal Regulation. 1/

Both kinds of balance -- political and economic -- would be rent asunder by proposals now pending before the Interstate Commerce Commission. In Ex Parte No. MC-172, served October 6, 1983, the Commission seeks comment on the question whether antitrust immunity should be administratively withdrawn altogether for motor carrier collective ratemaking and whether it should be withdrawn for shipments under 1,000 pounds. 2/ These proposals are venturesome forays against the intent of Congress as expressed in the 1980 Act.

One of the major concerns of Congress in 1980 was the repeated attempts of the Commission in the preceding three to four year period to "deregulate" surface transportation by redefining national transportation policies. The 1980 Act was intended to put a stop to agency activities beyond the will of Congress. In the findings set forth in Section 3 of the Act it is stated that:

> . . . in order to reduce the uncertainty felt by the Nation's transportation industry, the Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to congressional policy

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1/ Congressman Hagedorn, 126 Cong. Rec. H5353.

2/ Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments, October 6, 1983 (not printed).

> . . . [and] the Interstate Commerce Commission should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation enacted by Congress . . .

As the then ranking minority member (Congressman Harsha) of this Committee said during floor debate on the 1980 Act:

> It is not the responsibility of the regulatory agencies to determine how the American economy should operate on a day-to-day basis. Such broad policy decisions will be for Congress to decide and the agencies to implement. [3]

The principal means adopted by Congress to assure itself of faithful adherence by the Commission to the will of Congress was periodic oversight hearings. Chairman Howard observed that the commitment to oversight hearings was "made. . . so that any thwarting of congressional intent can be readily overcome."[4] The oversight mechanism built into the statute was undoubtedly the reason that a proposed amendment to incorporate a Congressional veto was not adopted when offered on the floor of the House. By that mechanism Congress has provided itself a Constitutional method of correcting excesses by the Commission and the proposed elimination of collective ratemaking is an appropriate subject for these oversight hearings.

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[3] 126 Cong. Rec. H5346.

[4] 126 Cong. Rec. H5343.

Collective Ratemaking Was Preserved by the Motor Carrier Act of 1980

One thing is clear. As reformed in the 1980 Act, collective ratemaking was to be preserved under the legislation. Thus, the Act provides that carriers may enter into collective ratemaking agreements (49 U.S.C. § 10706(b)(2)). An agreement "shall" be approved by the Commission "upon a finding that . . . [it] fulfills each requirement of" 49 U.S.C. § 10706 (b).[5]

The intent to preserve collective ratemaking was not equivocal. The House Report, as had the Senate report, said:

> It is important to emphasize that this legislation does not propose to eliminate rate bureaus. [6]

Moreover, it was emphasized that the discretion of the Commission in the agreement approval process was being restricted:

> . . . [T]he Committee has proposed to reduce the amount of discretion that the Commission has to approve or disapprove rate bureau agreements. This reduction in Commission discretion goes hand-in-hand with the other reforms proposed in the rate bureau process. This is a clear example of Congress defining the limits which it believes the Commission should follow in

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[5] The Commission may disapprove an agreement it finds is inconsistent with the National Transportation Policy.

[6] H. Rept. No. 96-1069, June 3, 1980, p. 28; Senate Report No. 96-641, March 24, 1980, p. 14.

> reducing the discretion of the Commission to expand those limits. 7/

Anchoring these limitations on Commission action is a presumption in favor of an agreement meeting the requirements of the Act:

> When the parties to an agreement meet all the conditions in the section, there is a presumption that the Commission should find the agreement to be in the public interest. 8/

While the Commission has authority to attach conditions to ratemaking agreements to assure compliance under 49 U.S.C. § 10706(b), stretching that power to the point of abolishing collective ratemaking would be a mockery of the intent of Congress to preserve collective ratemaking that complies with the statute. Conditions imposed by the Commission short of terminating collective ratemaking that are not based upon the express terms of the Act would be subject to a stringent standard of judicial review.9/ Outright abolition of this form of ratemaking would go well beyond the Commission's limited conditioning power by eliminating what Congress plainly intended to preserve. It would not only challenge the express purpose of Congress but also be an unlawful usurpation of legislative power by an agency that depends upon Congress for its authority.

7/ H. Rept. No. 96-1069, supra, p. 29.

8/ Id.

9/ See, American Trucking Ass'n., Inc. v. United States, 688 F.2d 1337, 1343 (11th Cir. 1982) suggesting the standard of review would be stronger than the "arbitrary and capricious" rubric normally applied to agency rules.

Ex Parte No. MC-172 Is Inappropriate For The Interstate Commerce Commission

The announced purpose of Ex Parte No. MC-172 is to consider withdrawal of antitrust immunity for collective ratemaking by motor carriers. In its broadest form the withdrawal would include all antitrust immunity for collective ratemaking, thus terminating every vestige of this form of ratemaking that is dependent upon immunity from the antitrust laws. The sole basis stated for that proposal is the sharply divided report this year of the Motor Carrier Ratemaking Study Commission. Thus, the Commission's announcement states that "in view of the findings of the Motor Carrier Ratemaking Study Commission, we invite comments on the separate question of whether antitrust immunity should be withdrawn altogether from motor carrier rate bureau activity."10/

Quite aside from the merits (or lack thereof) of the majority report of the Study Commission, its use by the ICC as a basis for abolishing collective ratemaking is not in keeping with its purpose. The report is intended for use by the Congress in making any legislative changes it finds necessary. This is clear from the report of this committee, which states:

10/ Notice of Proposed Rulemaking, Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments, served October 6, 1983, page 6. A copy of the notice is attached as the Appendix hereto. The document is hereafter referred to as the "Notice."

> This study is designed to provide a report to the Congress no later than one year before the provision on the elimination of single-line antitrust immunity takes effect. The study will be helpful in assisting the Congress in its determination as to whether future legislative changes will be necessary. [11]

The ICC is thus invoking a report intended for the use of Congress in order to justify action reserved to Congress, namely, change in the law applicable to collective ratemaking.

The source of authority claimed by the Commission for the proposed action is its power to review collective ratemaking agreements and change conditions of approval when necessary to assure consistency with the national transportation policy.[12] Whether the power claimed is adequate for the purpose is open to serious question. To begin with, a delegated power to condition approval of agreements could not be construed as a power to eliminate agreements permitted by statute. In this case, Congress expressly stated in the reports on the Motor Carrier Act of 1980 that "this legislation does not propose to eliminate rate bureaus."[13] It would be anomalous, indeed, if the Commission could exercise the power delegated by Congress to condition collective ratemaking agreements in such a manner that rate bureaus would be eliminated contrary to the explicit intent of Congress, the source of the delegated power. Reinforcing this view is the fact that Congress specified that agreements embodying the conditions prescribed in the Act are presumed to be in the public interest.[14/] The ICC itself has stated that agreements conforming to the conditions it imposed in implementing the 1980 Act are presumed to be consistent with the National Transportation Policy. Thus, in Ex Parte No. 297 (Sub-No. 5), Motor Carrier Rate Bureaus-Implementation of P.L. 96-296, 364 ICC 464, 466 (1981), the Commission said that:

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[11] H. Rept. No. 96-1069, p. 29.

[12] Notice, p. 5.

[13] H. Rept. No. 96-1096, supra, p. 28; S. Rept. No. 96-641, supra, p. 14.

> . . . [W]e will presume that a new agreement which is entirely consistent with the terms of this decision is not inconsistent with the [National Transportation Policy].

All major rate bureaus have filed agreements in compliance with the Commission's decision and there has been no determination that any is inconsistent with the terms of the decision.

In Ex Parte No. MC-172 the Commission is also entertaining proposals for termination of areas of collective ratemaking less than the whole. One of these is vaguely described as "other areas." Another relates to small shipments, defined as shipments under 1,000 pounds. This proposal, if adopted, would have the practical effect of eliminating all collective ratemaking because well over 80% of all shipments subject to collectively made rates are less than 1,000 pounds. The remainder of shipments subject to the collective process would not be sufficient to sustain the system.

[14/] H. Rept. No. 96-1096, supra, p. 29.

In addition to reliance upon "the recent findings of the Motor Carrier Ratemaking Study Commission," the ICC relies upon allegations by small shipment petitioners that there is an absence of effective competition between regulated motor carriers on small shipments, as the basis for eliminating collective ratemaking for such shipments.[15] Even if these allegations were true, they raise the same questions of the power of the ICC to substitute itself for Congress in the elimination of collective ratemaking as previously discussed in connection with total elimination of that form of ratemaking.

Whether antitrust immunity for collective ratemaking should be continued is a matter for determination by Congress. It has not been delegated by Congress to the ICC for determination. Under the circumstances, the proposals being entertained in Ex Parte No. MC-172 exceed the powers of the Commission and the intent of Congress expressed in the 1980 Act.

The Majority Report of The Motor Carrier Ratemaking Study Commission Furnishes No Sound Basis For Eliminating Collective Ratemaking By Congress, Let Alone The Interstate Commerce Commission

If walking across the recently formed crust of a volcanic crater merits caution, so does use of the majority report of the Motor Carrier Ratemaking Study Commission. The Study Commission was deadlocked five-to-five and unable to agree upon a report until one of its members was changed. Even then, it was barely able to muster a majority by the narrowest possible margin of six-to-four. The report recommends an end to collective ratemaking although more than 80% of the persons submitting statements to the Study Commission (including shippers, carriers, consultants and government officials) urged that collective ratemaking is necessary for an adequate system of motor carrier transportation.

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[15] Notice, pp. 3, 5.

All of the members of the U.S. House of Representatives who served on the Study Commission voted against the majority report. They joined in a minority report detailing the strong differences among the members of the Study Commission. It points out fundamental areas of concern that were not adequately examined by the majority: single-line and joint-line ratemaking relationships, impact of collective ratemaking on the level of freight rates, affect on the rate structure and impact on service for small shipments and small communities, among others. It specifies, with references to the record, many instances in which unrefuted evidence is ignored and conclusions are drawn with either no evidence or inadequate support in evidence.

Illustrative of the problems with the majority report are the very references relied upon by the ICC in its Notice of Proposed Rulemaking in Ex Parte No. MC-172. In the first of these, a passage is recited from pages 231-232 of the majority report as support for the claim that there is an absence of effective carrier competition for small shipments. Notice, p.

4.[16] The statements by the Study Commission are based upon the testimony of two witnesses cited in a footnote omitted by the ICC. Mr. William L. Voeller, traffic manager for the Sprouse-Reitz Company, an operator of variety stores in twelve western states, was one of the witnesses. He testified at the San Francisco hearing of the Study Commission that "[r]etention of the rate bureau system is essential to the well-being of the smaller components of our private industry--and to the general public."[17] On the question of competition for small shipments he added that "there is an abundance of competition, both intermodal and intramodal."[18] The other witness, Mr. Johnny Bowdoin, general manager of Simmons Machine and Pump, Inc., Willcox, Arizona, a shipper of small shipments from and to a small community, also strongly supported continuation of collective ratemaking. He testified that more competition would not "benefit shippers located in small towns like Willcox" and that "I seriously doubt that motor carriers can provide a comprehensive carrier network of service at reasonable costs without collectively dealing with service and rate matters."[19] The evidence for the passage from the majority report relied upon by the ICC will clearly not support any conclusion that there is ineffective competition for small shipments or that collective ratemaking should be terminated.

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[16] The conclusion in the majority report of the Study Commission is that a shipper of small shipments "relies extensively on competition among regulated LTL carriers to restrain increasing rate levels." p. 232.

[17] Prepared Statement - Summary. See, also, San Francisco Hearing Transcript, pp. 10-12.

[18] Prepared Statement - Summary and page 7.

[19] Prepared Statement, Phoenix, Arizona Hearing, p. 3.

The other reference to the majority report of the Study Commission by the ICC is to the fourteenth finding at page 533 that general rate increases have recently shifted a substantially greater share of wage and other cost burdens to shippers of small shipments.[20/] The minority report, pages 55 and 56, points out that this finding has no support in the record and is contradicted by other findings and conclusions in the report of the majority. It adds that the majority report observes that the ICC closely examines general rate increases as well as broad rate restructurings for reasonableness as well as undue discrimination.[21/] Parenthetically, these examinations include review of detailed cost and financial evidence submitted by rate bureaus along with expert evaluations by experienced ICC personnel. The ICC thus has the information and the means to assure the reasonableness and lawfulness of general increases. In any event, as noted by the minority, the majority of the Study Commission acknowledges in its report that it "has no adequate basis for determining whether these rate increases are discriminatory or unreasonable."[22/]

[20/] Notice, p. 4.

[21/] Majority Report, Chapter V, p. 195.

[22/] Majority Report, Chapter VII, p. 293.

Numerous other examples of contradictions and misapplications of evidence in the majority report could be listed. Many are cited in the minority report. They emphasize the fact that the report is not a sound basis for eliminating collective ratemaking. The report cannot be considered proper support for such action by Congress and it was never intended as support for such action by the Interstate Commerce Commission.

Conclusion

The delicate balance painstakingly forged by Congress for the Motor Carrier Act of 1980, which included a continuation of collective ratemaking as delimited by Congress and reduced discretion of the ICC in overseeing rate bureau activities, would be upset by adoption of any of the proposals under consideration by the ICC in Ex Parte No. MC-172. But, more than a change in the balance would occur, for the proposed actions would thrust the ICC into the legislative arena reserved to Congress. The issue of what changes should be made in collective ratemaking is now before Congress where it belongs.

It is not as if Congress were unfamiliar with the issue or that the question of collective action with antitrust immunity is one that Congress prefers to leave to administrative agencies for resolution. Just last week the House approved H.R. 1878, a bill that would grant antitrust immunity to ocean carriers for collective action that goes far beyond the limited rate actions permitted motor carriers.[23/] It would allow collective action for the pooling of earnings, allocations of ports served and schedules offered between ports, and the private regulation of competition between carriers, as well as agreement on rates.

In the case of motor carriers, Congress has not only the history of collective ratemaking under the Act to consider but also the majority and minority reports of the Motor Carrier Ratemaking Study Commission to evaluate. It also has the opportunity to consider legislation implementing either the majority or the minority recommendations.

The minority report of the Study Commission concluded that --

> . . .the Interstate Commerce Commission should be admonished that, while Congress makes the necessary evaluations of the matters discussed previously, it should not attempt to curtail, by administrative action, collective ratemaking as authorized by the 1980 Act. (p. 47).

This Committee is respectfully urged to act upon that suggestion.

[23/] The companion bill that earlier passed the Senate is S. 47.

SERVICE DATE

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INTERSTATE COMMERCE COMMISSION

(49 CFR Ch. X)

EX PARTE NO. MC-172

WITHDRAWAL OF ANTITRUST IMMUNITY FOR COLLECTIVE RATEMAKING ON SMALL SHIPMENTS

[illegible]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition jointly filed by two shipper associations, the Commission is proposing to withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. Petitioners assert that continued antitrust immunity for collective ratemaking on these shipments is consistent with the transportation policy of 49 U.S.C. 10101(a). If the proposal is adopted, the Commission will require conforming amendments to rate bureau agreements already approved by the Commission and to those agreements currently pending approval. We intend to issue a final decision within 60 days of receipt of comments.

DATES: Comments on the proposal to withdraw antitrust immunity for rate bureau activity related to small shipments are due November 16, 1983. Comments on the question of whether antitrust immunity should be withdrawn altogether for motor carrier rate bureau activity are due December 12, 1983.

A copy of all comments should be served on petitioners' representative, the law firm of McCarthy, Sweeney, & Harkaway, P.C. 1750 Pennsylvania Ave., N.W. Washington, D.C. 20006

ADDRESSES: The original and, if possible, 10 copies of comments should be sent to:

Ex Parte No. MC-172
Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, D.C. 20423

FOR FURTHER INFORMATION CONTACT:

Thomas T. Vining or Howell I. Sporn
(202) 275-7813 (202) 275-7691

SUPPLEMENTARY INFORMATION:

Under 49 U.S.C. 10706(b), motor carriers of property may enter into collective ratemaking agreements. Any such agreement may be submitted to the Commission for approval. The Commission must grant approval upon finding that the agreement meets each requirement of the subsection, unless the Commission finds that the agreement is inconsistent with the transportation policy of 49 U.S.C. 10101(a). The practical effect of Commission approval is that activities conducted pursuant to an approved agreement are immune from antitrust liability.

In Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus - Imp. of PL 96-296*, 364 I.C.C. 464 (1981), the Commission adopted standards for approval of rate bureau agreements consistent with the new limitations on motor carrier collective ratemaking established in the Motor Carrier Act of 1980 (MCA), Pub. L. 96-296, 94 Stat. 793 (1980). The rate bureaus have submitted new or amended agreements for approval; pending final action on these agreements, the bureaus retain their previously granted antitrust immunity for activities not inconsistent with the standards in the MCA and in our decision in Ex Parte No. 297 (Sub-No. 5), *supra*.

On June 27, 1983, the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Conference, Inc. (petitioners) jointly filed a petition requesting the Commission withdraw antitrust immunity for collective ratemaking by motor carriers of property with respect to rates on shipments under 1,000 pounds.[1] Petitioners' members tender to motor carriers a large number of shipments, predominantly minimum charge and less-than-truckload (LTL) shipments under 1,000 pounds, which move under rates adopted collectively within individual rate bureaus. Petitioners assert that continued antitrust immunity for collective ratemaking on these shipments is inconsistent with the transportation policy of section 10101(a).

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[1] The United States Department of Justice and the National Industrial Traffic League have filed pleadings supporting institution of the rulemaking proceeding.

Specifically, they note this policy includes the promotion of economical transportation (subsection (a)(1)(B)), reasonable rates for transportation without unreasonable discrimination (subsection (a)(1)(D)), and competitive transportation services (subsection (a)(2)). Petitioners contend that regulated motor carriers face little effective competition for LTL shipments below 1,000 pounds. Given this lack of competition, they argue that collective ratemaking results in the imposition of unreasonable rates and the absence of rate competition among bureau members. Petitioners believe that such anticompetitive pricing practices allow bureau members to derive the major portion of their profits from revenues on small shipments.

In support of their position, petitioners emphasize the level of increases taken by the bureaus on rates for small shipments during the past two and one half years. In 1981 and 1982, general rate increases by the nine major bureaus on minimum charge shipments averaged 12.76 percent and 13.55 percent, respectively. For those same years, prices as measured by the Consumer Price Index rose only 8.4 percent and 3.8 percent, respectively. General increases for the first seven months of 1983 averaged 12.4 percent on minimum charge shipments, 9.8 percent on shipments from one to 499 pounds, and 8.4 percent on shipments from 500 to 999 pounds. By contrast, increases on heavier LTL shipments averaged 5.1 percent, and increases on truckload (TL) shipments averaged 3.2 percent.

The substantial disparity in rate increases on different weight categories is attributed by petitioners to the relative absence of effective competition between regulated motor carriers on small shipments. They argue that conferring antitrust immunity on collective ratemaking for small shipments discourages or eliminates potential competition. Petitioners note that, under 49 U.S.C. 10706(g), the Commission may act on its own initiative or on application to prescribe or change the conditions on which approval of rate bureau agreements is granted. They request that we act to promote rate competition for shipments under 1,000 pounds through withdrawal of antitrust immunity for collective ratemaking with respect to these shipments.

We believe that petitioners' arguments deserve attention. Their general observations concerning competition for small LTL shipments are consistent with the conclusions of the Motor Carrier Ratemaking Study Commission in its report Collective Ratemaking in the Trucking Industry (June 1, 1983). That report, mandated by the MCA, states at pages 231-32:

> Competitors for TL include rail, private motor carriage and contract carriage. Competition for LTL freight is broad, involving some rail and private carriage as well as freight forwarders, shipper associations, air freight and package services. However, a substantial amount of the LTL freight that now moves by interstate regulated common motor carriage, particularly small shipments, moving long distances, is not consistently exposed to intensive competition from nonregulated trucking or other transportation modes. Many shippers still rely on ICC regulated LTL carriers for the bulk of their transportation needs. (footnote omitted) Thus, a shipper may need to ship from a few points to many destinations and have no practical use for either rail or private carriage. Such a shipper relies extensively on competition among regulated LTL carriers to restrain increasing rate levels.

The disparity between rate increases on LTL shipments below 1,000 pounds and increases on heavier LTL and TL shipments was also noted in the report. The Study Commission included among its 19 specific findings a conclusion that recent general rate increases "have shifted and imposed a substantially greater share of the wage and other cost burdens on shippers of small shipments." Id. at 533. While factors other than those cited by NASSTRAC may have influenced the pattern of LTL ratemaking, we see some merit in petitioners' arguments.

The Commission's 1981 decision in Ex Parte No. 297 (Sub-No. 5), *supra*, indicated that rate bureau agreements entirely in compliance with the terms of that decision would be presumed not inconsistent with the transportation policy of section 10101(a). Nevertheless, the issues raised by petitioners, the recent findings of the Motor Carrier Ratemaking Study Commission, and our own consideration of the direction of motor carrier collective ratemaking since 1981 lead us to question the basis for continuing to extend antitrust immunity as broadly as that provided in the past. The Commission has a continuing responsibility to review collective ratemaking agreements and "shall change conditions of approval" when necessary to assure consistency with the national transportation policy. *See* 49 U.S.C. 10706(f) and (g). *See also* *American Trucking Ass'n* v. *United States*, 688 F.2d 1337, 1343 (11th Cir. 1982).

Collective ratemaking with regard to rates on shipments under 1,000 pounds appears to inhibit competition and unduly discourage independent ratemaking. Such a result would be inconsistent with the transportation policy of section 10101(a) and with the broad procompetitive reforms adopted in the MCA. For these reasons, if the proposal is adopted antitrust immunity would be withdrawn for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. Additionally, the Commission would require conforming amendments to rate bureau agreements already approved by the Commission and to those agreements currently pending approval. Accordingly, a copy of this notice will be served on all motor carrier rate bureaus.

We invite comments from interested persons in response to the proposal made in this notice. We specifically request comment on whether 1,000 pounds or some other level is the appropriate point for defining small shipments in the context of this proposal. We also invite comments as to whether antitrust immunity should be withdrawn from any other areas of motor rate bureau activity. Finally, in view of the findings of the Motor Carrier Ratemaking Study Commission, we invite comments on the separate question of whether antitrust immunity should be withdrawn altogether from motor carrier rate bureau activity.

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources. Comments are welcome on this issue.

REGULATORY FLEXIBILITY ANALYSIS

The Commission certifies that adoption of the proposal in this notice will not have a significant economic impact on a substantial number of small entities. To the extent the proposal would affect small entities, the effects would be largely positive because of the increase in competition on small shipments. Comments on this issue are also invited.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Dated: September 23, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre dissented with a separate expression.

(SEAL)

Agatha L. Mergenovich
Secretary

COMMISSIONER ANDRE, dissenting:

I would dismiss this petition for reasons explained more fully below. However, as a majority of the Commission has decided otherwise, my principal concern is that the proceeding not become the occasion for the uncritical application of the conventional view that consultative (commonly called collective) ratemaking is so inherently evil that no respectable defense can be offered on its behalf. Nasstrac believes that price-fixing has raised the prices its members pay on certain traffic. The rate bureaus will maintain that their actions have been reasonable, justified in part by the long suppression of small shipment prices under Commission regulation. Nasstrac may well counter that if the current rate structure merely reflects true costs, then rate bureaus are unnecessary and should be abolished. However, I believe that before accepting this course we should take one more opportunity for serious consideration of the impact of imposing traditional antitrust regulations on the motor carrier industry. And we should as well reconsider the validity of the assumptions that underlie the per se rules against price-fixing. These are issues that warrant careful consideration by those who are opposed to unnecessary and counter-productive interference in the marketplace. I hope that meaningful dialogue can occur in this proceeding.

The topic of rate bureaus is a difficult one for those who have been working to achieve a market-regulated motor carrier industry. For many, rate bureaus are part and parcel of the whole regulatory complex that has stifled competition, and caused vast inefficiencies and injustices. It is thus very natural to assume that they should be eradicated as a potentially dangerous aspect of the old regime. Withdrewing the antitrust immunity now enjoyed would certainly do this because the risks of further rate bureau activity, no matter what the intended result, would be just too high. But before choosing to eliminate rate bureaus both the costs and the benefits of imposing per se rules against consultative ratemaking should be considered carefully. Price enhancement may harm consumers, but it is not the only danger, and there is an open question whether any substantial enhancement could succeed once open entry into motor carriage has been completely achieved.

Congress has not found the rate bureau issue to be an easy one. There are obvious differences in opinion, and recent press accounts suggest that this issue may be postponed once again if legislation to eliminate remaining entry controls is to be enacted. The effectiveness of antitrust policy as a type of business regulation is itself an area where opinions increasingly differ. There is a growing disenchantment among economists and legal scholars with the purposes and effects of antitrust policy. Whether the antitrust laws promote or inhibit the workings of a truly competitive marketplace is now being reevaluated in the light of ninety years of empirical evidence. While "price-fixing" remains a subject for condemnation among many of the new theorists, there are those who challenge even this aspect of traditional doctrine.

We are faced with a unique situation and opportunity. Motor carriage is a major industry operating largely outside of the antitrust regulatory system. Its economic characteristics are such that, in the absence of continued regulatory barriers, anticompetitive behavior is not likely to be successful. The elimination of entry regulation and other regulatory restraints on competition presents the opportunity to see whether open entry is a sufficient guarantor of efficient pricing even without antitrust regulation. We may also see whether consultative ratemaking itself produces efficiency gains that might otherwise be foregone. If these results do obtain, much will have been gained. It is possible that the continued operation of rate bureaus may be important to the long-term viability of many small and medium sized carriers. Like businesses in many other fields, these units may remain useful and productive only so long as some of their operations can gain the efficiencies of large scale, integrated enterprise.

It might be argued that this topic of rate bureaus and antitrust immunity has been thoroughly explored by the Motor Carrier Ratemaking Study Commission. Although the Commission's recent report is extensive and informative, it did not focus on the precise issue posed here. The report clearly documented that rate bureaus produced undesirable results under the regulatory system of tight entry controls, rate floors enforced by the ICC, restraints on the right to contract, and a variety of similar regulatory barriers. But the relevant question is whether rate bureaus would produce undesirable results in an environment without regulatory restraints on competition.

The answer is not obvious. One can plausibly maintain that, without the assistance of a regulatory statute making it unlawful to charge other than posted prices, motor carrier rate bureaus are unlikely to be able to maintain a price that is significantly different from the competitive market price. If a bureau attempted to establish a higher-than-market rate for a particular service, the result would most likely be discounting, independent actions, entry by new carriers and diversion of traffic toward contract carriers, forwarders and shipping associations. Given its cost conditions and other economic characteristics, the motor carrier industry appears to be an unpromising candidate for successful collusion.

Of course, a legitimate question is why we should run any risk at all of consumer harm, if the only benefit is to allow businessmen to conspire, even unsuccessfully, against the public interest. Again the answer may not be obvious, but some important aspects merit consideration. One answer, which perhaps begs the issue since per se rules do exist for much of the rest of the economy, is why the burden of proof in a free society should be on those who propose some peaceful cooperation in the use of their property. Stated another way, why should the continued existence of rate bureaus, if the market finds them useful, be presumed to be unlawful? While the ready answer will refer to the logic found in the early price-fixing cases, should we, at this unique juncture in the history of motor carriage, accept that logic without serious analysis?

A second answer is that rate bureaus may perform a valuable service wholly apart from any presumed power to establish non-market rates, and that these services may become increasingly valuable in the future. One of the newest areas of advance in economic theory is the economics of information. Several recent Nobel prizes have been awarded largely for pioneering efforts in this field. Its relevance is that information is costly to develop, distribute, and analyze. Rational pricing requires a great deal of information. This should be a part of serious discussions about rate bureaus. Note that we are discussing here the costs of making prices, not the costs of publishing them.

The gathering and analysis of cost and demand information may be a service which an individual firm will wish to purchase from an outsider. This is simply an application of a standard economic maxim: a firm will purchase services when doing so is less costly than producing them internally. Pricing data is not inherently different from the kinds of information that are developed by other consulting services. If an outside firm can perform pricing analysis more efficiently than some existing trucking companies, the freedom to use the outside help is arguably valuable. Forcing each carrier to perform these services internally may result in inefficient duplication of effort and impose large costs on each carrier. Some smaller carriers may be forced from the marketplace or forced to merge into firms which would be substantially larger than would otherwise result. Whether these conditions would come to pass depends on a number of unknowns, such as the relative magnitude of the cost of pricing compared to other costs faced by the trucking firm. But if these costs are important, eliminating outside help may force an increase in the optimal size of motor carriers. It is not at all obvious that this would be a desirable outcome from the viewpoint of economic efficiency or from that of traditional antitrust doctrine.

We should also consider the possible role of rate bureaus in reducing shippers' costs of obtaining price information and in facilitating transactions by providing a beginning point for price negotiations. Nor should we ignore the substantial litigation and compliance costs of the traditional system of antitrust regulation, nor its slowness, nor the uncertainty as to whether even efficiency-enhancing business practices may be attacked. Antitrust regulation may not be superior to regulation by the market.

A significant concern in considering a course of regulation by market forces is whether all of the regulatory barriers which constrain competition have been removed. I believe we have made great progress in the past few years and that the bulk of these constraints have been eliminated. But there are still some others. One is the previous Interstate Commerce Commission policy of granting what amounts to a monopoly franchise to a rate bureau for ratemaking services within its territory. We are reexamining this policy in a simultaneous proceeding in response to a petition from a rate bureau for nationwide ratemaking authority. If ratemaking services are an economic product, we must be sure that we are not imposing artificial barriers to entry into this market.

There may be other ICC regulations which should be reexamined in the light of ratemaking in a free environment. These may include some or all of our tariff publication rules, rules about membership in rate bureaus and use of rate bureau tariffs by non-members, and even the problem of copyrights to tariffs. We should also make certain that we are not continuing artificial constraints on independent actions, discounts, contracts, or other means by which carriers can respond to inappropriately set rates. Perhaps we would better serve the public interest by focusing our energies in these directions.

Having said all this, there is still the question of whether the present proceeding will develop any useful input on these and other questions that bear on the issue of post-regulation rate bureau activity. It is hard to be sanguine about the possibilities as this proceeding is accusatory in nature. And, as to the accusations, I would have dismissed them.

As noted, Nasstrac's principal contention is that small shipment rates have risen faster than general price inflation and faster than the rates for large shipments, and that this demonstrates the anticompetitive and discriminatory nature of the resulting rate structure. Neither the petition nor the majority decision deals with the alternative explanation. The alternative is that the rate structure has been distorted in the past and that the current adjustments reflect a movement toward true economic cost. In one way or another the Commission has considered this very issue in each of the recent general rate increases. In a recent rulemaking we found that the method for computing rate increases should be modified by the results of a study we had done to modernize platform costing. To this point there has been at least a majority of the Commission that has found the increases to be presumptively justified. Nasstrac has always had available to it the opportunity to attack directly the offending rates in a complaint proceeding. That shippers have not done so probably reflects the fact that in such a proceeding the burden would be on them to prove their case. That is a costly and time-consuming proposition and it must appear risky at best, since in each instance an antecedent request for suspension and investigation will have already been denied. Given the existence of a per se doctrine regarding price-fixing and the possibility of an uncritical, reflexive response to antitrust issues among transportation policy makers, Nasstrac may have reversed that burden by bringing a collateral attack against the bureaus' immunity. It will be a great irony if the leaders of transportation reform become defenders of antitrust regulation at precisely the moment that self-doubt has taken hold in earnest among other antitrust adherents.

Mr. **Anderson**. Please proceed.

TESTIMONY OF ROBERT J. CORBER, ATTORNEY AT LAW

Mr. **Corber**. Mr. Chairman and Congressman Shuster, I very much appreciate the opportunity to participate in these oversight hearings and in your graciousness in holding the hearings later in the day so that I might have the opportunity to be here.

My name is Robert J. Corber. I am a former Commissioner of the Interstate Commerce Commission. I am presently engaged in the private practice of law in the field of transportation.

My statement is devoted entirely to the issue surrounding a proceeding before the Interstate Commerce Commission designated as MC–172, the proceeding in which the Commission is proposing to eliminate collective ratemaking.

I have just a few points, Mr. Chairman, in addition to what is contained in the prepared material that I would like to make or emphasize of the material that has been presented in the prepared statement.

My first point relates to the fact that the Commission in MC–172 has, in addition to the proposal to eliminate all collective ratemaking, the proposal to eliminate collective ratemaking as to small shipments defined as those weighing under 1,000 pounds.

That would just as effectively eliminate collective ratemaking across the board as the other proposal because well over 80 percent of the shipments that move under collectively made rates are under 1,000 pounds, and those shipments that would remain for the collective system would not be sufficient to sustain that system.

The second point goes to the question of the authority of the Commission to undertake what it has noticed in this proceeding. Congress made it clear in the Motor Carrier Act of 1980 that, No. 1, collective ratemaking as reformed by Congress in that act was to continue.

Congress specifically stated that it is not proposed to eliminate rate bureaus.

Second, it was made clear by Congress that changes in collective ratemaking were to be the province of Congress and not the Commission. That was fully recognized by Chairman Taylor of the ICC when he appeared before the Senate Oversight Committee on September 21 of this year and said, in response to the question why the Commission had not wiped out collective ratemaking on its own, why it had not taken that step across the board, "I think Congress really wanted to do that, and that is why they had the study commission," recognizing that this was a matter for termination by the Congress.

The Commission, of course, claims the power to condition ratemaking agreements for consistency with the national transportation policy and contends that this is the basis for entertaining the proposals that exist in that proceeding.

But Congress made it clear in connection with the 1980 act that agreements that met the specific requirements laid out in the 1980 act were presumed to be in the public interest. Indeed, the Commission itself held in its proceeding Ex parte 297 sub 5 where it issued the rules implementing the provisions of the Motor Carrier

Act of 1980 that any agreement that conformed with that decision would be presumed not to be inconsistent with the national transportation policy.

Of course, agreements have been filed by all of the major rate bureaus that are in conformity with that decision and there's been no determination by the Commission after well over 2 years that any agreement is not in conformity with its decision.

So it must be concluded that the Commission does not have the power through the conditioning authority to determine or change the scope of collective ratemaking, and Chairman Taylor, I think, was correct when he effectively said that to the Senate Oversight Committee.

I would like to comment also on the fact that the Commission relies upon the majority report of the Motor Carrier Ratemaking Study Commission as grounds for the elimination of collective ratemaking.

That report, in my opinion, is not grounds for elimination of collective ratemaking by Congress let alone the ICC. It is, as you know, a sharply divided Commission that issued the reports. It was issued with the narrowest possible margin of 6-to-4 vote after there had been a 5-to-5 deadlock and with the deadlock being broken only by a last minute change in the membership of the Commission that permitted the 6-to-4 vote.

All of the Members of the U.S. House of Representatives who served on that Commission voted against the majority report and a very strong minority report was issued pointing out the omissions, the deficiencies that permeate that majority report.

I have referred to some of those in my prepared statement, and I will not labor the record further, but I respectfully invite your attention to some of the discussion in my prepared statement and to the minority report itself.

But perhaps even more important than the deficiencies that exist in that majority report as highlighted by the minority report is the fact that it is directed and was requested by, is there under the instructions of the Congress, for itself and the President of the United States.

It is not for the Interstate Commerce Commission and it was never intended as a vehicle for the Interstate Commerce Commission to invade what is essentially the legislative province of the Congress in dealing with the scope of antitrust immunity.

The Congress has demonstrated a capacity and a willingness to deal with the question of the scope of antitrust immunity in times past without resort to administrative agencies for that determination.

Within the past few days, the approval by Congress of the Shipping Act amendments, H.R. 1878, which granted very broad immunity to the ocean carriers in a piece of legislation that was a companion to S. 47, a bill previously adopted by the Senate, legislation which would grant ocean carriers much broader collective ratemaking authority, authority that would go to allocation of territories, control of scheduling among ports of call, real control of competition in addition to the control or the agreement on rates, the single bit of collective activity that is permitted to motor carriers.

Thus, Congress is the proper forum to consider the scope of antitrust immunity and it has the means to make the determination that is required. In this instance in the motor carrier field, it has not only the majority and the minority reports of the study commission to evaluate but it has the history of collective ratemaking under the Interstate Commerce Act and indeed the process of evaluating those reports and undertaking consideration of this question has already begun in the Congress.

In the minority report of the study commission, it is suggested that while Congress is undertaking these evaluations the Interstate Commerce Commission should be admonished not to take any action to curtail collective ratemaking as authorized in the Motor Carrier Act of 1980.

I would respectfully urge you to consider that suggestion, to adopt it and take action on the basis of it. I was interested in the testimony of NSSTC, Mr. Larry Smith appearing for NSSTC who, while we are on different sides, the rate bureaus are on different sides from him in connection with this proceeding MC-172, they, of course, feel that the increases that have occurred on small shipments have been excessive.

The rate bureaus would counter with the information that very detailed cost information was supplied to the Interstate Commerce Commission in connection with every one of those rate increases, that the Interstate Commerce Commission using experienced and expert personnel reviews every one of those proposals and that cost and financial information, and only after the most thorough study, decides whether or not to suspend or to let those rate increases go into effect.

I would also point out as apparent from Mr. Silberman's data that was presented earlier today that while there have been revenue increases and some increases in profits by the, at least, top 10 carriers within the industry, there still are very sizeable revenue deficiencies within the industry so that those rate increases are not swelling the coffers of the motor carriers.

But aside from that and while there is this difference of view with NSSTC, there was agreement by them with the approach the rate bureaus have advocated. They said that the ICC should be admonished that the rate provisions of the act have not been abrogated and the rate bureaus would certainly agree with that and urge respectfully that that kind of action be taken.

In the meantime, the subcommittee may well want the benefit of an investigation of what is taking place out there with respect to ratemaking, with respect to the discounts that were highlighted here by Mr. Zigich in his testimony this morning as well as to what is taking place in the field of small shipments and fortified with that information be able to address the problems that are arising out of the administration of the act by the Commission.

Thank you very much, Mr. Chairman.

Mr. **Anderson**. Thank you very much, Mr. Corber, for your presentation.

Mr. Corber, as a former member of the Interstate Commerce Commission, what, in your opinion, would result if collective ratemaking were to be eliminated?

Mr. CORBER. Well, I would like to answer that by reciting quickly what I think are the essential benefits of collective ratemaking, the need that exists for that form of ratemaking.

First of all, it provides the means for coordinating a national transportation system. It is the vehicle by which carriers, the thousands of carriers who comprise our national system, are able to get together and provide services that will permit a shipment to go all across this country by however many carriers are required to take it across the country from origin all the way from origin to destination.

It is the most efficient and most workable means for bringing about those joint arrangements. It may well be that there is no other possible means of bringing about those joint arrangements. I know that's a matter of controversy.

The majority report, for example, of the motor carrier ratemaking study commission takes the position that those joint arrangements could be made without antitrust immunity.

Now, the deficiency in that report on this subject is that it assumes that connecting carriers are partners in a transportation venture, that they are not competitiors.

Well, the evidence before the study commission shows quite clearly that in almost every instance connecting carriers are competitors in one form or another. Joint arrangements might be made by a local carrier which originates shipments, needs to move it on across the country so it will make a joint arrangement with a long-haul carrier.

But the way the entry provisions are administered today that local carrier has the opportunity to acquire long-haul authority itself. Therefore, it is at least a potential competitor of the long-haul carrier, but indeed, what happens in most of these situations is that the long-haul carrier also has the same authority as the local carrier. Their routes parallel. They are effective competitors, and that raises very serious antitrust problems when those carriers sit down to negotiate the arrangement for that joint service. And that would be lost, Mr. Chairman, that vehicle for making those joint arrangements would be lost, and as I said, very serious antitrust problems would exist which might well make it impossible for carriers to deal on a bilateral or a unilateral basis in bringing about joint arrangements.

Another basic benefit of collective ratemaking is the information that it provides shippers and carriers and anyone else interested in the rate system, rates on traffic on service that is available for those rates.

It is a quick and ready means of acquiring that information and probably the least expensive way that information can be provided, and in view of the activities of the Justice Department over the years where some indictments have been brought against organizations, for example, that attempted to collate information of this nature and make it available to shippers were indicted as bringing about unlawful exchanges of pricing information and the like.

That information exchange would not exist in the same form at least as it is today and with the same savings that are there today if we did not have collective ratemaking.

Now, there was a very comprehensive study submitted to the Motor Carrier Ratemaking Study Commission by the Booz-Allen firm which attempted to quantify what the informational savings or transactional savings to shippers would be. They came up with an estimate of anywhere between $4 and $8 billion a year. These are savings attributed to the information itself and to the employees, the cost of employees, of adding personnel, that would be necessary if they didn't have that information available to them through the joint system.

I have gone on too long, but let me mention two other things very quickly. The other things that come about as a result of this system is that there is a continuous review of rate structures, of rate levels, that is an assistance to public regulatory authorities to help screen out discrimination and preference and unreasonable rates.

Not perfect. Certainly not perfect when the public regulatory authorities such as the ICC are declining to carry out their statutory responsibility, but nevertheless an important factor in that this is the benefit that comes from that.

I might mention it provides a national pricing system which serves the entire country. The benefits—I could go on and on, but these are some of the things that would be lost if we did not have collective ratemaking, in my judgment, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Corber.

Mr. Corber, in recent years, there has been a constant battle about funding levels for the ICC. The Commission's funding has decreased and personnel levels have diminished. With that in mind, do you think the ICC has the money and the personnel to implement economic regulation in a proper manner?

Mr. CORBER. I would not want to mislead the committee. While I have followed those matters with some interest and participated fully in them while I was a member of the Commission, I would not claim to be right on top of what is happening at the Commission in terms of its budget.

My impression, though, Mr. Chairman, for what it is worth, is that the Commission does not have sufficient staff to do the type of regulatory job that it is commanded to do by the Motor Carrier Act of 1980.

That's only an impression, and if I may add this, I think that approving arrangements such as collective ratemaking helps fill the gap, to the extent there is one here in the forces of the Commission, because the collective ratemaking system is a source of information to the Commission and, as I indicated earlier, a source of maintaining a rate structure that is as free of discriminatory elements as the law intends.

Mr. ANDERSON. Mr. Shuster.

Mr. SHUSTER. Mr. Chairman, I really do not have any questions. As one of those Commissioners on the ratemaking commission who voted against the majority report, I simply want to say I concur with the testimony of the witness and I cast my vote accordingly.

Mr. ANDERSON. Thank you very much, Mr. Corber, for your presentation.

Mr. CORBER. Thank you very much, Mr. Chairman.

Mr. **Anderson**. Our next witness is the chairman of the legislative committee of the Transportation Lawyers Association. Mr. Mark Andrews.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

Before the

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

UNITED STATES HOUSE OF REPRESENTATIVES

Oversight Hearings Pursuant to
Section 3(b) of the Motor Carrier Act of 1980

SUMMARY OF

STATEMENT

ON BEHALF OF

TRANSPORTATION LAWYERS ASSOCIATION

(FORMERLY, MOTOR CARRIER LAWYERS ASSOCIATION)

By: Mark J. Andrews
Chairman, Legislative Committee

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Washington, D. C.
October 24, 1983

STATEMENT OF MARK J. ANDREWS
CHAIRMAN, LEGISLATIVE COMMITTEE
TRANSPORTATION LAWYERS ASSOCIATION
(FORMERLY, MOTOR CARRIER LAWYERS ASSOCIATION)
BEFORE THE HOUSE COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION

on the occasion of its

1983 OVERSIGHT HEARINGS PURSUANT TO SECTION 3(b)
OF THE MOTOR CARRIER ACT OF 1980

Washington, D. C.
October 24, 1983

The Transportation Lawyers Association ("TLA"), formerly the Motor Carrier Lawyers Association, appreciates the Committee's invitation to participate in these critically important hearings. We value this opportunity to help advance the serious purposes for which these hearings were ordained under section 3(b) of the Motor Carrier Act of 1980 ("1980 Act"). Those statutory purposes are twofold:

(1) to "ascertain the effects of" the 1980 Act on the motor carrier industry, and

(2) to "ensure" that the 1980 Act "is being implemented according to Congressional intent and purpose."

As a non-profit, specialized bar association founded in 1937, TLA believes it is uniquely well situated to help advance both of these inquiries. Far from being a small coterie of Washington specialists, TLA has approximately 500 active members throughout the United States and Canada who represent motor carriers and their customers, suppliers and employees before the courts, the ICC, and other regulatory bodies at all levels of government. With most of our members also representing a variety of other clients both related and unrelated to transportation, the Association's recent name change reflects the increasingly broad range of member lawyers' interests and perspectives. Through publications and two continuing legal eduation programs each year, TLA strives to help its members discharge the full range of their professional responsibilities to clients.

Thus TLA's perspectives on the effects of the 1980 Act, and on whether Congressional intent has been implemented, are not merely theoretical. They derive from day-to-day counseling and representation of motor carriers, and from day-to-day observation of how the 1980 Act has been administered (or non-administered) by the Interstate Commerce Commission ("ICC"). Our testimony will address the "effects" and "intent" issues in that order. As will be seen, however, the two issues are ultimately inseparable because the alarming condition of today's motor carrier industry relates directly to the ICC'S failure to implement Congressional intent.

Moreover, it is not just the motor carrier industry and related interests which accuse the ICC of nonfeasance. To an ever-increasing extent, similar charges are being leveled by shippers as well as carriers. Nor do the complaints relate solely to the ICC's performance under the Motor Carrier Act of 1980; its handling of coal rates, boxcar deregulation, route closings and other matters under the Staggers Rail Act of 1980 recently came under intense shipper criticism in a separate series of Congressional hearings. Thus, while many of the points made herein have been raised at oversight hearings in prior years, we hope and trust the Committee will view the ICC's nonperformance with renewed urgency this year. The problem goes far beyond one or a few ICC decisions with which various interested parties disagree; what we are seeing instead is a pervasive failure or refusal to use those regulatory tools which Congress purposefully left in the ICC's hands when the 1980 legislation was enacted.

Condition of the Industry

Because we are lawyers rather than economists, we will defer to labor and industry witnesses for a detailed portrait of the once-prosperous motor carrier industry as it stands today. However, several current features of the trucking scene are, we think, beyond serious dispute.

First, the economic health of the industry has eroded alarmingly. Overcapacity abounds[1] at a time when tonnage, revenue, profits and return on equity have sharply declined.[2] The ICC and the Department of Transportation ("DOT") keep saying these declines result mainly from the recession, but the beginning of the industry's downturn coincides with substantial ICC deregulation by administrative fiat in 1978,[3] not with the beginning of the recession in 1980.[4]

The industry's economic distress has been accompanied by clear signs of accelerating market concentration, especially in the general-freight trucking sector.[5] General-freight truckers make heavy investments in terminals, specialized communications facilities, and other difficult-to-duplicate service features in order to specialize in handling relatively small shipments for a broad spectrum of large and small shippers. Of all trucking sectors, this is the closest to the classic concept of a public utility. Yet these providers of essential service for general freight have been dying by the dozens[6] and they are not being replaced. To TLA's knowledge only one major new general-commodity small-shipment carrier (Leaseway Express) has emerged since 1980.[7] This increased market concentration mocks the procompetitive goals of the 1980 Act.

Moreover, the carnage among existing carriers has not been limited to the general-freight sector. Our association made a request to the ICC under the Freedom of Information Act for a list of all motor carriers under its jurisdiction which, according to its records, have discontinued operations since July 1, 1980. We are submitting as Attachment A hereto a summary of the ICC response, in the form of a printout listing 1,159 motor carriers of property moved to "inactive" status in the ICC's own records during the period July, 1980 through December, 1982. The printout is organized by the carriers' states of domicile for the convenience of the Subcommittee, its members and staff; we will shortly be analyzing the list by Congressional district as well, and would request the Committee's leave to submit that analysis for the record. It should be noted that many carriers who are in fact out of business (including at least one client of mine) are not included in this list because they have kept up their insurance and other basic filings (the probable bases for the ICC's "active" and "inactive" classifications) in hopes of reviving or selling their businesses.

These trends have continued in 1983. Random perusal of three recent weekly issues of Traffic World reveals a total of 83 carriers that either are voluntarily surrendering their rights or are being cited by the ICC for failure to maingain insurance.[8/] Projected on an annual basis, the motor-carrier failure rate thus continues at a level of at least 1400 per year.

Whatever the precise numbers involved, it seems clear that while some thousands of new carriers of unascertained size and competence may have come into the industry since 1980 (according to the ICC)[9], many of those new entrants already have exited along with an alarming number of established general-freight firms. We question whether the framers of the 1980 Act intended to introduce such rampant instability into the motor-carrier portion of this country's infrastructure. Interestingly, no such failure rate among carriers is reported by our members in Canada, whose recession has been at least as severe as ours, but whose motor carriers are still subjected to meaningful economic regulation.[10]

Furthermore, the vaunted benefits of increased motor carrier "competition," including rate discounting, have by no means been distributed evenly across the landscape. According to DOT studies that purport to assess small-community service impacts of the 1980 Act (as currently interpreted by the ICC), the great majority of small-town and rural shippers surveyed continue to report rate increases, "in contrast with national returns which indicate that on balance the post-Motor Carrier Act period has seen rate reductions."[11] This suggests that uncontrolled rate discounting is increasing the rate disadvantages of rural vis-a-vis urban shippers.

Similarly, it is far from clear that rural shippers are experiencing any increase in the number of carriers serving them, notwithstanding any increase in the number of ICC-authorized carriers nationwide. While one DOT study does claim an "apparent net gain in the number of carriers serving rural communities" in the Southeast[12]--albeit without any consideration of what kind of carriers might have been gained and lost--another DOT study makes no showing of any increased quantum of carrier "competition" in the Oregon and Nevada communities it examines.[13] To the extent small-community markets have not been entered by additional carriers, such communities have suffered disproportionately from the high failure rate among established general-commodity carriers discussed earlier. Thus, there appears to be a widening gap between the rates and service available in smaller trucking markets as opposed to the rates and service available in larger, easier-to-serve markets.[14]

We do not share the ICC's apparent unconcern about the existing instability and high rate of business failures in the motor carrier industry, as expressed in the agency's September 13 report in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980 (hereinafter, "MC-166"). There the ICC makes the timeworn argument that all we are seeing is a winnowing out of "inefficient" carriers (p. 9),[15] primarily as the result of "recently adverse economic conditions" (p. 8). At the same time, however, a more novel and revealing argument is advanced (pp. 8, 9):

> More importantly, we do not view carrier instability, _per se_, as something that should be avoided at any cost. * * * Thus, in essence, Congress acknowledged the benefits of a certain degree of instability.

Wholly aside from the question of whether Congress intended any such thing (see next section), we wonder how the Commission can advance this proposition so cavalierly in view of its own summary of the testimony by shipper participants in MC-166. The consensus of those shippers, notwithstanding the ICC's vaunted concern with _price_ competition, is that carrier _service_ is their "primary concern" and "of primary importance" (MC-166 report, Appendix D, pp. 3, 4). Moreover, not all shippers are as well able to withstand instability in the motor transportation infrastructure as are the somewhat unrepresentative individual shippers who participated in MC-166, 67.9 percent of which (19 out of 28) are "Fortune 500" companies (_Id._, Appendix E, pp. 3-4).

Legislative Intent

TLA does not suggest that the deplorable industry conditions described above represent direct effects of the 1980 Act itself. No one can know what the effects of that legislation would be until it is implemented as Congress intended. In our view, today's conditions in the motor carrier industry result from the ICC's failure to implement Congressional intent in three principal areas--enforcement of the common carrier obligation; enforcement of entry standards, especially as to safety and fitness; and enforcement of ratemaking standards so as to maintain a minimum level of financial responsibility and economic stability in this vital industry. In each of these areas, and in others as well, the Commission's general approach has been to delay and ultimately to avoid deciding questions of vital importance to the industry and the shipping public.

With regard to the common carrier obligation, the ICC initially proposed a major reexamination of all sides of the question in Ex Parte No. MC-77 Sub-3, instituted January 27, 1981. The industry was led to expect issuance of new guidelines and standards in light of the 1980 Act. After a full round of briefs and oral argument, however, the proceeding languished for more than two years until March 15, 1983, when the ICC finally issued a notice determining "that there is no need to address this matter at any length." The only substantive guidance to shippers and motor carriers provided by the March 15 notice consisted of two sentences as follows (at page 2):

> A common carrier is not in violation of its obligations if it declines to provide service within the scope of its operating authority because such service is economically or operationally impracticable in the circumstances at the time of the service request. To the extent that prior Commission decisions may have spoken of an absolute duty to provide service to the breadth of the operating certificate, those cases are overruled as inconsistent with law and policy.

The clear import of this expression by the ICC is that carriers may determine on their own what service is convenient for them to provide, untempered by any considerations of public interest in maintaining essential services.

The ICC has displayed similar passivity with regard to carrier safety and fitness. For example:

1. The Commission has deleted rules requiring applicants for motor carrier authority to submit basic evidence of their financial condition, safety programs and the feasibility of their proposed operations. See Ex Parte No. 55 Sub-43, 45 Fed. Reg. 86780, 86782-83, 86790, December 31, 1980. Instead, even when the applicant has no previous experience as a motor carrier, the Commission is now satisfied with a bare, one-sentence assertion that the carrier has "access" to and is "familiar" with DOT safety regulations. See 49 C.F.R. 1160.6, 1160.8.

2. The Commission has continually forced broad authority on carriers who had explicitly stated they were in no position to provide such service and did not want the authority. This has happened as recently as March 2, 1983 in a decision entitled CDB Incorporated, Extension--Texas (No. MC-143776 Sub-34, unreported). Notwithstanding the clear admonition by the Fifth Circuit in American Trucking Associations v. United States, that the ICC under no circumstances should force "Procrustean" authority descriptions on unwilling carriers (659 F.2d 452, 472 (1981)), the Commission's latest rulemaking notice in this area still would force many applicants to accept unwanted bulk-commodity authority, and still would allow ICC rejection of authority proposals giving "the appearance" of being "designed to satisfy . . . litigative interests" (Ex Parte No. MC-142 notice served August 8, 1983, at pp. 11-12, 16). How odd it is that the ICC apparently views avoidance of litigation as a bad thing, and is unwilling to let carriers design their own operating authorities by reference to "market forces" in which the agency places such great faith for almost all other purposes.

3. The Commission has failed to take full advantage of existing computerized communication links with the safety enforcement arm of DOT, instead confining routine ICC checks of DOT safety records to cases involving temporary as opposed to permanent authority. Compare pages 1-2 with pages 2-3 of a Memorandum of Understanding executed by ICC and DOT under date of September 6, 1982. The Chairman of the ICC recently acknowledged, in his June 14, 1983 testimony before a Senate Committee concerning S. 1108, an omnibus transportation safety bill (at page 5), that unless DOT files a "petition," the applicant carrier's DOT safety rating will not routinely be considered in a permanent authority case.

With regard to motor carrier financial condition and rate structure, the pattern has been the same:

1. The ICC allowed a reopened inquiry into desirable motor carrier rates of return to languish for more than four years. Specifically, the agency's November 27, 1978 decision in Investigation and Suspension Docket M-29772, General Increase, Southern Motor Carrier Rate Conference, April, 1978 was stayed by the D.C. Circuit in S.M.C.R.C. v. United States, No. 78-3317, and a successor proceeding remained pending before the ICC on administrative appeal until July 28, 1983, when the agency once again decided, in essence, that no standards or guidelines were necessary.

2. The ICC has repeatedly refused to consider requests by industry and labor groups for establishment of standards or guidelines governing the recent wave of motor carrier rate discounting. See, for example, dismissal orders in docket no. 38872 (American Trucking Associations), decided September 27, 1982; No. 38724 (International Brotherhood of Teamsters), decided April 15, 1983; and No. 38766 (Owner-Operator Independent Drivers Association), decided April 15, 1983).

3. In the MC-166 proceeding discussed previously, the Commission initially voted to issue a definitive policy statement, but subsequently renounced any such intention in a notice published 47 Fed. Reg. 49481 (November 1, 1982). As the Commission's then Vice Chairman pointed out in a separate expression issued that date (47 Fed. Reg. 49483):

> Reversal of the Commission's prior vote and commitment to developing a formal policy statement means that the Commission is now left with a highly ambiguous proceeding leading nowhere in particular. Such an amorphous proceeding only invites characterization as a "make-work" effort designed to soothe emotions and demonstrate that the Commission is "doing something" (although not much).

Indeed, the proceeding has led "nowhere in particular", as is illustrated by the September 13 "report" which, once again, declines to adopt any pricing standards or guidelines.

In defense of these decisions and non-decisions, the ICC is fond of citing those portions of the 1980 Act legislative history which indicate a Congressional desire for greater reliance on marketplace forces (see, e.g., MC-166 report, p. 9 n.6). On the other hand, the legislative history also contains admonitions that the 1980 Act was intended to occupy "a middle ground between continuing the status quo on the one hand, and total deregulation on the other hand";[16/] that authority is to be granted to a carrier only when it is shown "likely to be a safe operator";[17/] and that the statute "continue[s] to provide for the common carrier obligation"[18/]--to mention only a few passages confirming that Congress intended to liberalize motor carrier economic regulation but not to trivialize it.

The fact of the matter is that Congress expressed many intents in enacting this legislation. If any one of these goals is carried to an extreme, it will doubtless interfere with realization of other such goals. TLA believes Congress knew this, and for that very reason expected the ICC to harmonize these goals through use of administrative expertise and discretion. In other words, Congress provided the Commission with a keyboard of policy goals and means to effect those goals--but the ICC insists on sounding but one note. We submit that the administrative discretion entrusted to the ICC is not being exercised when the agency uniformly resolves all doubts in favor of non-regulation and uniformly grants every operating rights application, every common-control exemption petition, and every contract-carrier tariff-filing exemption to come before it (assuming the applicant has followed the propoer format and sent in any required filing fee).

Under these circumstances it is no wonder that the carriers themselves have now been joined by significant shipper groups in decrying the ICC's nonfeasance.[19]

A Word About "Sunsetting"

Given the sorry record of recent years, it is tempting to conclude that no ICC would be better than the ICC we've got, at least in trucking. In a possible reflection of this mood, the recent oversight hearings of the Senate Commerce Committee were diverted from the statutory oversight purposes, instead becoming a forum for debate on a proposal to "sunset" all ICC economic regulation of trucking. TLA hopes this committee and this House will resist such a temptation, not only for the reasons stated earlier in this testimony, but also for those additional reasons suggested below.

We would suggest that a large part of the commercial disputes arising in our industrialized, decentralized society inevitably will pit shippers against carriers, or one carrier against another. For nearly a century, the ICC has quietly gone about the unglamorous business of resolving thousands upon thousands of such disputes. While the efficiency of the ICC's dispute-resolution mechanisms has not been beyond criticism, the agency's expertise and impartiality was, for most of its history, widely acknowledged by both supporters and critics of its policies and decisions. Even before the procedural innovations of recent years, the ICC provided a relatively inexpensive forum, unimpeded by many of the technical rules of evidence and accessible even to parties not represented by legal counsel.

It is fashionable to decry the costs of proceedings before the ICC as an unnecessary regulatory burden on the economy. But we doubt that this supposed burden would be reduced, much less eliminated, if shipper-carrier and intercarrier disputes were shunted away from the ICC and into the courts. Does anyone seriously suggest that the delay, expense and technical vexation of processing large numbers of transportation disputes through our already-overburdened court systems would be less than what has been the norm even at the "unreformed" ICC? Those who have complained about the decisional pace of the ICC in large and difficult cases ought to compare what happens in antitrust matters of similar scope.

At a time when Congress and the organized bar are directing increased attention to alternative methods of dispute resolution, surely it would be a retrograde step to divert a major category of commercial litigation from the ICC to the courts. And surely it is a dubious idea to extend regulatory "sunsetting" to additional modes at a time when the merits of sunsetting airline economic regulation are being re-examined with increasing urgency.

Conclusion

In an era of strict budgetary constraints, some may ask: "What is so special about the trucking business that it should be protected by any governmental economic regulation at all?" Our answer is this: The ultimate object is not to protect the truckers, but to protect all the people who depend on trucks and share the roads with them. To an unparalleled degree, trucking firms serve the public in public. When we and our families travel to the grocery store or the toy store or the department store, we save money when the store has stable, predictable, dependable transport services giving it access to a variety of competitive suppliers nationwide. At the same time, we want some assurance that the motor carriers whose vehicles we encounter on the road to the store can afford to maintain their tires and brakes, train their employees, and pay their drivers enough so they won't be tempted to cut corners. It is surprising that people alarmed by the prospect of slightly longer, heavier and wider trucks (pursuant to the Surface Transportation Assistance Act of 1982) are not here expressing similar concerns for preserving orderly market conditions in the trucking industry. It is surprising that the reasonable economic regulation for which we contend is not recognized, for the above reasons, as also constituting health and safety regulation in the broadest and best sense.

Granted, trucking--or at least most of its sectors--cannot be said to fit the classic mold of a public utility. Trucking is not a natural monopoly and, in most sectors, has few inherent barriers to entry (though tendencies toward undue concentration do exist). Trucking regulation, however, originated precisely because excessive ease of entry led to disorderly markets.[20] The framers of trucking regulation recognized, we think, that the last ounce of "competition" in a totally unregulated trucking industry could be purchased only at the expense of less competition in the rest of the economy, as unstable and unreliable transportation kept shippers from competing in distant markets. In an era when we are trying to make the United States economy more competitive in world trade, let us not forget that the sheer size and scale of our continental economy is one of our basic, inherent advantages. A weakened trucking industry weakens the sinews of that continental economy. TLA thinks that reasonable economic regulation of trucking, in accordance with the intent of the 1980 Act, has a role to play in preventing further hemorrhaging of this vital industry.

Evidently the ICC's "game plan" in the recent past has been to divest itself, by administrative fiat, of the vital areas of regulatory responsibility Congress retained in the 1980 Act as outlined above. As remedies for the ICC's nonfeasance, we urge several things. First, the Congress must scrutinize the philosophies and intentions of future ICC nominees with greater care, to ascertain that nominees intend to exercise discretion in balancing the various policy goals of the 1980 Act. Secondly, it may be desirable to re-emphasize the ICC's position as an arm of Congress rather than the Executive, perhaps by re-examining Reorganization Plan No. 1 of 1969 with a view to returning to the ICC greater control of its internal organization. Most of all, this Committee must directly express to the ICC its determination that the agency will perform its statutory functions with respect to the common carrier obligation, fitness, and ratemaking standards in a reasonable, balanced manner.

As a respected Washington Post commentator on economic issues recently reminded us, "Transportation is not just any old business. Basically it's a public utility which has to be regulated in the public interest."[21/] That kind of regulation is all we ask.

Thank you.

1/ See, e.g., House Doc. 97-87, Oversight--Motor Carrier Act of 1980, pp. 82-83 (1982) (testimony of Bennett C. Whitlock, Jr. for American Trucking Associations, Inc. before the surface transportation subcommittee of this Committee). The fact that at least "short-run excess capacity" exists in the trucking industry today is explicitly acknowledged in the ICC's September 13, 1983 report in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property, at p. 13.

2/ See, generally, statement of Irwin H. Silberman at 1980 Act oversight hearings before the Senate Commerce Committee dated December 14, 1982 (hereafter, "Silberman testimony"). To our knowledge the analysis by Mr. Silberman, a private economic and financial consultant, has not been seriously challenged.

3/ Silberman testimony, pp. 5-12, 19-24. For the ICC's own description of administrative deregulation in the late seventies, see Ex Parte No. MC-121, Policy Statement on Motor Carrier Regulation, 44 Fed. Reg. 60296, 60297-99 (October 19, 1979).

4/ The current economic recession is generally understood to have begun in 1980. See, e.g., industrial production data from Federal Reserve Board Bulletins cited at p. 86 of House Doc. 97-87, supra (testimony of Bennett C. Whitlock, Jr.).

5/ It is estimated that the market share of the ten largest motor carriers increased from 34.7 percent in 1976 to 42.0 percent in 1982 (Silberman testimony, p. 26), and that these carriers' share of the industry's after-tax ordinary income increased from 46.1 percent in 1976 to 83.6 percent in 1981 (id., pp. 20, 22).

6/ At least 63 general-freight motor carriers included in the Silberman testimony's data base went out of business between January 1, 1979 and November 1982. They had represented an estimated 14.10 percent of general-freight industry revenues in 1978. Silberman testimony, p. 27.

7/ Even DOT admits that "the new entries into the motor carrier industry following the passage of the MCA were mainly into the sector of the Industry specializing in transportation of [truckload] shipments" rather than the less-than-truckload freight typically handled by the general-freight trucker. See "Effects of Regulatory Reform on Motor Carrier Failures: A Preliminary Assessment" (July, 1982), at p. 3.

8/ See Traffic World Issues of August 22, September 5 and September 12, 1983, at pp. 45-47, 47 and 44 respectively.

9/ See, e.g., House Doc. 97-87, supra, at p. 333 (testimony of Chairman Taylor).

10/ See, e.g., Comments of Ontario Section, Canadian Highway Transport Lawyers' Association, on Interim Report of Ontario Public Commercial Vehicles Act Review Committee (December, 1982), p. 10.

11/ See DOT paper entitled "Follow-up Study of Shipper/Receiver Mode Choice in Selected Rural Communities, 1980-1981," (September, 1982), at p. 14.

12/ "Follow-up Study," supra, p. 7.

13/ See DOT paper entitled "A One-Year Assessment of the Motor Carrier Act of 1980: Small Community Trucking Service in Nevada and Oregon" (November 30, 1981).

14/ In its "Nevada-Oregon Study," supra, DOT attempted to prove that general-freight truck service is relatively unimportant to small communities. This paper studied the service needs of certain desert communities having virtually no industry. Even in these communities, however, "reported" and "primary" usage of general-freight truckers ranked ahead of every other mode except private trucking and small package carriers (id., pp. 19, 39). Moreover, the DOT's "Follow-Up Study," supra, n. 11, recognized (at p. 54) that small communities having a greater degree of industrialization will have greater dependence on regulated carriers of less-than-truckload freight. The same study further recognized (at p. 27) the possibility that carrier service in small towns might well be "withdrawn" at the "end of the economic slowdown . . . in favor of more lucrative markets."

15/ In actual fact, no one has proven that the hundreds of failed carriers in recent years were all "inefficient," as opposed to merely being small carriers with resources insufficient to withstand recent economic pressures.

16/ S. Rep. No. 96-641, 96th Cong.2d Sess. 1-2 (1980).

17/ *Id.*, at 5.

18/ 126 Cong. Rec. 5351 (1980)(remarks by Congressman Shuster as floor manager for what became the 1980 Act).

19/ *See*, *e.g.*, "Total Deregulation v. Sloppy Regulation" (editorial on page 2 of weekly *Traffic World* for August 22, 1983), discussing recent change of position on collective ratemaking by the National Small Shipments Traffic Conference (NASSTRAC) because of asserted ICC failure to regulate general rate increases. While MCLA takes no position on NASSTRAC's specific proposals, NASSTRAC's complaints further illustrate the ICC's nonfeasance. The Shippers National Freight Claims Council has come forward with a "manifesto" expressing similar regulatory concerns; see weekly *Traffic World* issue of July 11, 1983, at p. 11.

20/ *See* discussion by Supreme Court in American Trucking Associations, Inc. v. United States, 344 U.S. 298, 312 (1953).

21/ Hobart Rowen, *Airline Deregulation: A Bankrupt Policy*, Washington Post, September 29, 1983, p. A21.

ATTACHMENT TO TESTIMONY OF MARK J. ANDREWS
FOR TRANSPORTATION LAWYERS ASSOCIATION, OCTOBER 24, 1983
(MOTOR FREIGHT CARRIERS PLACED ON "INACTIVE" STATUS BY
INTERSTATE COMMERCE COMMISSION, JULY 1980-DECEMBER 1982)

DOCKET [1]	ACCOUNT [2]	DATE [3]	CITY	STATE	ZIP	CARRIER
MC148346	3	11/29/82	Anchorage	AK	99501	Quality Transport Corporation
MC121629	3	06/11/81	Homer	AK	99603	Homer Transfer Company, Inc.
MC145740	3	06/05/81	Kenai	AK	99611	Doyle's Fuel Service
MC133425	3	08/24/80	Fairbanks	AK	99701	Stallings Motor Lines, Inc.
MC124514	3	06/11/81	Petersburg	AK	99801	Reliable Transfer Company of Petersburg, Incorporated
MC136935	3	04/03/81	Wrangall	AK	99929	Wrangell Transport Co., Inc.
MC147230	3	06/05/81	Oneonta	AL	35121	J D C Trucking Company
MC117926	3	06/09/82	Pelham	AL	35202	Moore-Handley, Incorporated
MC143808	3	09/21/81	Birmingham	AL	35203	Xxoff, Inc. Bank for Saving Building [sic]
MC147604	3	06/08/81	Birmingham	AL	35217	C.T. Trucking
MC144758	3	06/05/81	Haleyville	AL	35565	Bill Tidwell
MC146781	3	07/02/81	Millport	AL	35576	P & S Trucking, Inc.
MC008676	3	04/26/82	Huntsville	AL	35801	White Transfer & Storage Company Inc
MC155725	-	11/27/81	Albertville	AL	35950	Johnny Sims
MC120992	3	05/18/81	Tallassee	AL	36078	B. & L. Truck Line
MC143731	3	06/05/81	Monroeville	AL	36460	Donnis Barnes
MC147089	3	06/05/81	Mobile	AL	36615	King Transportation, Inc.
MC129370	3	07/21/81	Pine Bluff	AR	71603	Lynn Staton
MC002207	3	04/29/81	Camden	AR	71701	Cross Transfer Company
MC111737	3	08/28/81	El Dorado	AR	71730	C. F. Wright
MC057739	3	06/05/81	Magnolia	AR	71753	Ferguson, W. B.
MC007670	3	11/12/81	Waldo	AR	71770	Boswell Truck Lines
MC135998	3	07/21/81	Glenwood	AR	71943	Ken Blackmon
MC146744	3	11/27/81	Cabot	AR	72023	Eubanks A. L.
MC148523	3	06/05/81	Cabot	AR	72023	Mackway Inc.
MC139033	2	06/11/81	Little Rock	AR	72203	C R T, Incorporated
MC110486	3	07/02/81	West Memphis	AR	72301	Pitts, Walter
MC141070	3	01/15/81	Wynne	AR	72396	Razorback Dump Haulers, Inc.
MC159478	-	04/16/82	Imboden	AR	72434	Powell Trucking
MC148497	3	11/12/81	Pocahontas	AR	72455	Leon Clay Inc.
MC146430	3	06/05/81	Powatton	AR	72458	Roadway Dump Haulers Inc.
MC138507	3	06/09/81	Heber Springs	AR	72543	Bob Wood Trucking Co.
MC144508	3	04/29/81	Rogers	AR	72756	Omni Carriers, Inc.

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[1] Generally speaking, newer carriers have higher docket numbers. Those numbered MC-140000 or higher probably entered the industry after ICC regulation was administratively liberalized in 1978.

[2] Refers to size of carrier. Class "3" carriers have annual revenues of less than $1 million; those in class "2" have annual revenues of $1 million to $5 million; those in class "1" have annual revenues exceeding $5 million.

[3] Denotes date carrier placed on "inactive" status.

DOCKET	ACCOUNT	DATE	CITY	STATE	ZIP	CARRIER
MC148194	3	11/26/82	Springdale	AR	72764	Larry D. & Patricia Chick Trucking
MC058266	3	05/14/82	Phoenix	AZ	85004	Valley Carriers, Inc.
MC096866	3	05/20/82	Phoenix	AZ	85005	Sloane's Transfer & Storage Co Inc.
MC152165	-	11/27/81	Phoenix	AZ	85022	Houchin Trucking
MC058022	3	12/01/81	Parker	AZ	85029	C-A Freight Lines, Inc.
MC097296	3	05/21/82	Casa Grande	AZ	85222	Pinal Warehouse Company Inc (Ariz Corp)
MC120967	3	09/25/81	Hayden	AZ	85235	Gordon Wainwright
MC121071	3	06/09/81	Buckeye	AZ	85326	R. B. Duncan & Son, Inc.
MC105786	3	05/24/82	Clifton	AZ	85533	Willis Freight Service
MC125636	3	11/03/80	Green Valley	AZ	85614	Edward Kerbs
MC105816	3	05/24/82	Mammoth	AZ	85618	Clark, Fred L.
MC035029	3	08/04/82	Los Angeles	CA	90003	McCallson Van & Storage Company
MC144703	3	12/01/81	Santa Monica	CA	90017	Michael Petersen Trucking, Inc.
MC082987	3	11/03/80	Los Angeles	CA	90017	Checker Transfer & Storage Co.
MC146189	3	12/04/81	Los Angeles	CA	90021	Potatoes Transport Company
MC133416	3	11/03/80	Los Angeles	CA	90028	Jack M. Roth Company
MC119286	2	06/09/81	Los Angeles	CA	90040	Interamerican Star Truck and Warehouse Corporation
MC146799	3	12/01/81	Commerce	CA	90040	J & S Trucking, Inc.
MC148593	3	09/21/81	City of Commerce	CA	90040	O C S Trucking
MC099952	2	07/29/80	City of Industry	CA	90040	Eagle Truck Lines, Inc.
MC063286	3	05/14/82	Los Angeles	CA	90040	Ernst/Air Speed Trucking
CM089006	3	05/17/82	Los Angeles	CA	90058	National Trucking Co of Los Angeles
MC059230	3	01/12/81	Los Angeles	CA	90060	Skinner Transportation System, Inc.
MC138125	3	01/09/81	Gardena	CA	90247	M.A.P. Transportation, Inc.
MC099956	3	05/21/82	Maywood	CA	90270	Ace City Delivery
MC032606	3	05/10/82	Pico Rivera	CA	90660	Harris Trucking Co
MC038536	2	05/10/82	Santa Fe Springs	CA	90670	Distribution Express
MC141240	3	04/29/81	Bellflower	CA	90706	E. W. Ball Distributing
MC127855	2	07/02/81	Long Beach	CA	90810	Rex L. Hodges, Inc.
MC091513	3	09/24/81	Long Beach	CA	90810	Don Carr Trucking, Inc.
MC144162	3	11/24/81	Canyon Country	CA	91351	Time Contract Carriers, Inc.
MC141025	3	06/05/81	Thousand Oaks	CA	91360	Great American Stageline
MC144116	3	12/01/81	Woodland Mills	CA	91364	Transport Motor Service, Inc.

DOCKET	ACCOUNT	DATE	CITY	STATE	ZIP	CARRIER
MC034084	3	06/30/81	Burbank	CA	91505	Burbank Van & Storage Co.
MC148213	3	06/05/81	Chino	CA	91710	Wright on Trucking
MC138166	3	10/22/82	City of Industry	CA	91744	Dolphin Transportation Incorporated
MC095556	3	07/31/81	City of Industry	CA	91744	Sam Parriott
MC144497	3	06/09/81	Pomona	CA	91766	Central Dispatch Distributing Inc.
MC144543	3	12/01/81	Pomona	CA	91769	International Consolidators, Inc.
MC106595	3	12/01/81	San Gabriel	CA	91776	Boyd Trucking Company
MC144838	3	12/23/81	West Covina	CA	91791	Ahco Trucking
MC136287	3	04/29/81	Oceanside	CA	92054	California Van & Storage Co.
MC144336	3	12/01/81	Poway	CA	92064	R.J. Michols, Inc.
MC011763	3	12/01/81	San Diego	CA	92101	C & R Transfer Company
MC072846	2	05/17/82	San Diego	CA	92113	San Diego Van & Storage Co.
MC096716	3	05/20/82	San Diego	CA	92114	Coastway Express Inc
MC117236	3	06/08/82	Brawley	CA	92227	Edwards, Walter L.
MC144353	3	09/21/81	Calexico	CA	92231	Lucero's Trucking
MC116291	3	06/09/81	Imperial	CA	92251	Johnson, Garret
MC135957	3	06/07/82	San Bernardino	CA	92402	Drexel Moving and Storage Co.
MC112196	3	05/27/82	San Bernardino	CA	92407	Rozella A. Anderson
MC138811	3	11/24/81	Riverside	CA	92507	Arlington Packaging & Moving Company
MC155479	-	03/22/81	Orange	CA	92669	Classic Carriers
MC147059	3	06/05/81	Placentia	CA	92670	Nationwide Freight Consultant
MC119326	2	06/22/82	Anaheim	CA	92801	Hobbs Trucking Co.
MC119326	2	06/22/82	Anaheim	CA	92801	Hobbs Trucking Co.
MC064719	3	01/21/81	San Anselmo	CA	92960	Bay Area Cartage Company
MC148205	3	09/21/81	Visalia	CA	93277	Estes Trucking
MC150258	-	06/05/81	Bakersfield	CA	93308	Saunders Bros. Trucking, Inc.
MC128752	3	12/01/81	Bishop	CA	93514	Howard's Limber, Inc.
MC144845	3	12/01/81	Fresno	CA	93706	Mid-Cal Building Materials, Inc.
MC030166	3	05/07/82	Fresno	CA	93716	Owl Transfer Co.
MC099851	2	01/22/81	Fresno	CA	93725	Hefley Trucking Co
MC121758	3	06/11/81	San Bruno	CA	94066	Jim's Transportation, Inc.
MC133359	3	04/21/81	San Carlos	CA	94070	Pacific Moving and Storage Co.
MC153155	3	10/15/82	San Francisco	CA	94080	Manlowe United, Inc.
MC146887	3	06/05/81	South San Francisco	CA	94080	Rinaldi Motor Transport, Inc.
MC099836	3	05/21/82	S. San Francisco	CA	94080	Tesi Drayage Company

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MC058486	2	05/14/82	San Francisco	CA	94105	Aero Special Delivery Service, Inc.
MC037172	3	12/21/81	Palo Alto	CA	94303	Vango
MC133714	3	12/01/81	Hayward	CA	94545	Golden State Towing, Inc.
MC138756	3	05/27/81	Dublin	CA	94566	Dublin Fast Freight, Inc.
MC134297	3	10/26/81	Union City	CA	94587	Sunway Lines, Inc.
MC073826	2	05/17/82	Oakland	CA	94604	Haslett Company
MC027126	3	05/07/82	Oakland	CA	94607	Checker Van & Storage Of Oakland, Inc.
MC099745	1	01/22/81	Oakland	CA	94607	Shippers Imperial Inc.
MC143038	3	12/01/81	Oakland	CA	94607	Bay Area Cartage Company
MC150605	-	08/25/81	West Sacramento	CA	94691	Sierra Express, Inc.
MC121217	3	06/11/81	Berkeley	CA	94702	Dependable Truck Lines
MC096236	3	05/20/82	Novato	CA	94947	Crockett's Van & Storage, Inc.
MC134772	2	07/13/81	Milpitas	CA	95035	George Lange Trucking Co.
MC072036	3	05/17/82	San Jose	CA	95103	James Transfer & Storage Co.
MC121[illegible]0	3	06/11/81	San Jose	CA	95131	Dynamic Freight Corporation
MC055176	3	05/14/82	Stockton	CA	95206	Tyrrell Transportation Co.
MC141683	3	11/13/81	Merced	CA	95340	Dana Exum
MC143844	3	12/01/81	Eureka	CA	95501	Doug Grant Truck Transportation, Inc.
MC098286	3	05/21/82	Eureka	CA	95501	Humboldt Moving & Storage Co.
MC134794	3	11/03/80	Woodland	CA	95695	Wilson Transportation Company
MC123173	3	06/11/81	Mission City, B. C.	CD	00000	Mission Fuel Limited
MC118406	3	06/11/82	Port Morien, Nova Scotia	CD	00000	Bradley H. Hopkins
MC141302	-	06/05/81	Penticton, British Columbia	CD	00000	Berry & Smith Trucking Ltd.
MC141329	3	06/30/81	Kelowna, British Columbia	CD	00000	Edward Stapleton and Alfred Glessman
MC138797	3	05/18/82	Saskatoon, Saskatchewan S7K1T4	CD	00000	North Star Transport Ltd.
MC135610	3	06/05/81	County of Portneuf, Quebec	CD	00000	Jean Charles Voyer
MC145378	3	11/27/81	Unionville Ontario	CD	00000	Don Anderson Haulage Limited

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MC144151	3	02/23/82	Surrey, B.C. V3S 1G1	CD	00000	Westrux Timber Transit, Inc.
MC115628	3	01/14/82	St. Basile De Portneuf, Quebec	CD	00000	St. Basile Transport, Inc.
MC090548	2	03/19/82	London, Ont. N6A 461	CD	00000	Husband International Transport Ltd.
MC139948	3	06/30/81	Calgary, Alberta	CD	00000	Atco Ltd.
MC145575	3	06/05/81	Wierton Ontario	CD	00000	Court Trucking
MC143426	3	06/05/81	Kamloops	CD	00000	Roberts Transport
MC145640	3	12/23/81	Surrey	CD	00000	Steven R. Grider
MC118396	3	06/11/82	Nova Scotia	CD	00000	Paul Andrew Wood
MC129405	3	06/11/81	North Vancouver	CD	00000	Squamish Transfer, Limited
MC134255	3	12/14/81	New Dundee	CD	00000	Elmer R. Poll Transport Ltd.
MC126882	3	06/11/81	Montmagny, Quebec	CD	00000	Transport Dallaire, Ltd.
MC108958	3	08/28/81	Vancouver, BC	CD	00000	Buster's Auto Towing Service LTD
MC111066	3	05/17/82	Mansonville	CD	00000	Gordon J. Logan
MC114126	3	05/28/82	Salmo	CD	00000	Salmo Transport LTD
MC116815	3	01/15/81	Edmonton Alberta	CD	00000	Turfland Express LTD
MC115646	3	06/08/82	Montreal Quebec	CD	00000	Brink's Canada Limited
MC146722	3	02/24/82	Aurora	CO	80011	Joe Pryor Transport
MC146307	3	12/06/81	Lafayette	CO	80026	Frontier Provisioners Inc.
MC098946	3	05/21/82	Elbert	CO	80106	Tweedy Transfer
MC071096	1	05/17/82	Littleton	CO	80120	Norwalk Truck Lines, Inc.
MC146409	3	12/06/81	Denver	CO	80207	Westship Trucking Inc.
MC146034	3	06/05/81	Denver	CO	80216	Ranchers Transportation Service, Inc.
MC117966	3	06/09/82	Denver	CO	80216	Produce Forwarding, Inc.
MC139441	3	06/30/81	Denver	CO	80216	Chief's Moving & Storge Co.
MC057986	3	05/14/82	Bolder	CO	80302	Ted Carpenter & Sons, Inc.
MC067776	3	05/14/82	Golden	CO	80401	Palmer, Calvin
MC021246	3	05/07/82	Fort Collins	CO	80521	Griffin, Patrick
MC099466	3	05/21/82	Colorado Spring	CO	80902	McCann Bros. Transfer Co.
MC115860	3	08/28/81	Colorado Springs	CO	80910	Dalby Transfer & Storage, Inc.
MC056785	3	11/03/80	Las Animas	CO	81054	Las Animas Transfer Co.
MC114644	3	05/22/81	Montrose	CO	81401	Orville Dunlap & Son
MC112166	3	05/27/82	Naturita	CO	81422	La Salle Transport, Inc.
MC139093	3	06/30/81	Craig	CO	81625	W. W. "Shag" Lang
MC097986	3	05/21/82	East Granby	CT	06026	Red Top Transportation, Inc.

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MC075226	3	05/17/82	South Windsor	CT	06074	Decarli's Express, Inc.
MC116726	3	06/08/82	Union	CT	06076	Goodhall's Garage, Inc.
MC073006	3	05/17/82	Hartford	CT	06106	Max Sanders Inc
MC147480	3	12/10/80	East Hartford	CT	06108	The Arrow Line, Inc.
MC039966	3	05/10/82	Amston	CT	06231	Leary Transport, Inc.
MC009586	3	04/26/82	New London	CT	06320	Thames Moving Company
MC061796	3	05/14/82	Mystic	CT	06355	Barnes Moving & Storage, Inc.
MC114436	3	05/28/82	Southbury	CT	06488	Holmes of Southbury
MC058396	3	05/14/82	West Haven	CT	06516	Frank's Express, Incorporated
MC072146	3	05/17/82	Bridgeport	CT	06604	Hurzeler Bros. Transportation
MC066916	3	05/14/82	Greenwich	CT	06830	Spee-Dee Delivery
MC144524	1	07/13/82	Greenwich	CT	06830	GK Trucking Corp.
MC004876	3	04/26/82	Norwalk	CT	06851	Barry, William J.
MC077476	3	05/17/82	Washington	DC	20001	D. C. Transit System of Maryland, Inc.
MC127913	3	04/03/81	Bethesda	DC	20014	Barnes Motor Lines
MC062896	3	05/14/82	Washington	DC	20018	Poole's Drayage Co.
MC021086	3	05/07/82	Newark	DE	19711	L J Nichols & Son Inc
MC113856	-	05/28/82	Wilmington	DE	19804	Ace Delivery Service
MC021006	3	05/07/82	Delmar	DE	19940	Triglia, Joseph S.
MC038425	3	10/09/80	Smyrna	DE	19977	Ross Trucking Co., Inc.
MC148885	3	06/05/81	Holly Hill	FL	32017	Michael Industries Inc.
MC125225	3	04/29/81	Lee	FL	32059	W. M. Brown
MC147274	3	09/21/81	Jacksonville	FL	32202	Southeast Carrier Corporation
MC114346	3	05/28/82	Jacksonville	FL	32202	Trans-Caribbean Motor Transport, Inc.
MC136420	2	01/22/81	Jacksonville	FL	32203	Oklahoma Border Express, Inc.
MC150541	-	09/21/81	Jacksonville	FL	32206	ABG Cartage Co.
MC138498	3	07/21/81	Jacksonville	FL	32207	ASI, Inc.
MC143401	3	07/07/81	Pensacola	FL	32505	Pensacola Industries Services, Inc.
MC136466	3	07/07/81	Longwood	FL	32750	Hilldrup Transfer & Storage of Key West, Inc.
MC138637	3	06/16/82	Orlando	FL	32808	L. J. Goater, Inc.
MC143954	3	06/05/81	Orlando	FL	32808	K-R Contractors
MC138637	3	06/16/82	Orlando	FL	32808	L. J. Goater, Inc.
MC121120	3	06/11/81	Hialeah	FL	33012	Southern Garment Distributing Corp.

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MC121799	3	01/15/81	Hollywood	FL	33020	Carpet Delivery Service, Inc.
MC140288	3	07/02/81	Miami	FL	33126	Plantain Express Inc.
MC117890	1	11/30/80	Miami	FL	33142	Seminole Transport Lines, Inc.
MC108560	3	05/27/81	Miami	FL	33142	Ruke Transport Line Inc.
MC143959	3	12/01/81	Miami	FL	33166	All-Pro Transport Lines, Inc.
MC147613	3	09/21/81	Miami	FL	33168	Rushfeldt Jim
MC151971	3	02/24/82	Miami	FL	33173	Management & Terminal Operators, Inc.
MC146576	3	06/05/81	Fort Lauderdale	FL	33312	K. G. L, Inc.
MC136095	3	05/11/82	Ft. Pierce	FL	33450	Gilbert Express Line
MC147191	3	07/14/81	Jensen Bch	FL	33457	Peter Holman Trucking, Incorporated
MC147050	3	07/14/81	Jensen Beach	FL	33457	Peter Halman Trucking, Inc.
MC148287	3	06/08/81	Lake Worth	FL	33461	All-American Transport Corp.
MC148712	3	12/06/81	Decatur	GA	30035	Personalized Haulage of Atlanta, Inc.
MC146768	3	06/05/81	Marietta	GA	30060	Price Hauling, Inc.
MC138261	3	04/29/81	Marietta	GA	30060	Marietta Transfer & Storage Company
MC139060	3	05/27/81	Marietta	GA	30065	Thurman's Inc.
MC150989	3	09/21/81	Atlanta	GA	30315	Doug's Delivery Service, Inc.
MC139412	3	07/07/81	Atlanta	GA	30340	C/O Wagner Electric Sales Corporation
MC150387	3	05/19/82	Clarkesville	GA	30523	Arrendale Trucking, Inc.
MC143097	3	07/21/81	Washington	GA	30673	Eggs Incorporated
MC146385	3	06/05/81	Chatsworth	GA	30705	Dunn Trucking
MC145322	3	08/25/82	Byron	GA	31008	Watson Trucking, Inc.
MC147128	3	12/01/81	Dublin	GA	31021	Irish Transport, Inc.
MC128696	3	11/04/81	Warner Robins	GA	31093	Dependable Transport, Inc.
MC144423	3	06/05/81	Wrightsville	GA	31096	Claxton Trucking Company
MC139658	3	06/18/81	Macon	GA	31201	Harry Poole, Inc.
MC150476	-	06/05/81	Waycross	GA	31501	Vircalmar, Inc.
MC147664	3	06/08/81	Brunswick	GA	31520	Transcontinental Refrigerated Express, Inc.
MC147828	3	09/21/81	Douglas	GA	31533	Myco Distributors
MC139463	3	06/23/81	Colquitt	GA	31737	Tabb Trucking Co., Inc.
MC139415	3	06/30/81	Colubus	GA	31907	Distrubuting Services, Inc.
MC133860	3	01/18/81	Honolulu	HI	96819	Crown Pacific, Ltd.

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MC136697	3	07/07/81	Norwalk	IA	50211	South Iowa Refrigerated, Inc.
MC148509	3	07/14/81	Des Moines	IA	50301	Chaneled Resources Transport, Inc.
MC148465	3	06/05/81	Des Moines	IA	50316	Associated Carriers Company
MC118126	3	06/11/82	Mason City	IA	50401	Kramer Produce
MC074796	3	05/17/82	Mason City	IA	50401	Mason City Warehouse Corp.
MC063776	3	05/14/82	Mason City	IA	50401	Heimendinger Transfer & Storage Co.
MC114647	3	07/21/81	Forest City	IA	50436	Pletcher Transfer & Storage
MC135942	3	04/03/81	Joice	IA	50446	Brones Livestock
MC126049	3	05/05/82	Woden	IA	50484	Doden Trucking Company, Inc.
MC084596	3	05/17/82	Eagle Grove	IA	50533	Spangler Truck Line
MC088796	3	05/17/82	Ledyard	IA	50556	Fred Munyer
MC115274	3	06/11/82	Storm Lake	IA	50588	Thompson & Laird Moving & Storage, Inc.
MC145364	3	04/06/81	Eldora	IA	50627	Five G's Trucking Co., Inc.
MC138617	3	04/06/81	Waterloo	IA	50703	Jim's Truck Service, Inc.
MC096506	3	05/20/82	Battle Creek	IA	51006	Hansen, Winston
MC026707	3	09/02/81	Le Mars	IA	51031	Phillip J. Groetkew
MC073276	3	05/17/82	Everly	IA	51338	Adrian, Fred. J.
MC154487	-	09/01/81	Carroll	IA	51401	Roaring Fork Founders, Inc.
MC150811	-	06/05/81	Council Bluffs	IA	51501	Supreme Transport Co.
MC034257	3	02/24/82	Avoca	IA	51521	Woltmann Trucking
MC052271	3	01/12/81	Carson	IA	51525	Walter Brockman
MC127482	3	06/09/81	Crescent	IA	51526	Ferris Trucking
MC138394	3	07/14/81	Henderson	IA	51541	B & C Transport
MC117516	3	06/08/82	Red Oak	IA	51566	Kinnison Truck Line
MC095775	3	01/15/81	Soldier	IA	51572	Milton Melby
MC023876	3	05/07/82	Hamburg	IA	51640	Barrett Trucking, Billy
MC133954	3	12/21/81	Hamburg	IA	51640	R.D. Dalton Transfer Co., Inc.
MC094206	3	05/20/82	Riverton	IA	51650	W & E Construction Company
MC126539	2	06/09/81	Dubuque	IA	52001	Katuin Bros., Inc.
MC126293	3	04/03/81	West Union	IA	52175	Laverne Dale Jacobson
MC101331	3	08/28/81	Brooklyn	IA	52211	Griffith, Fred
MC139303	3	12/15/81	Centerville	IA	52544	VJ Trucking Company
MC147988	3	06/05/81	Fairfield	IA	52556	Parris Freight Terminal
MC009997	3	04/07/82	Oskaloosa	IA	52577	Keomah Truck Lines, Inc.
MC114800	3	06/11/81	Burlington	IA	52601	W. & B. Express
MC134559	3	12/14/81	Burlington	IA	52601	Tucker's Wrecker Service

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MC005550	3	04/29/81	Andover	IA	52701	Andover Trucking Company
MC106814	3	04/29/81	Galena	IA	52734	The Willowa Engineering Company
MC071199	3	01/15/81	Davenport	IA	52805	Al's Truck Line, Inc.
MC148223	3	06/05/81	Pocatello	ID	83201	Intermountain Courier Service
MC158670	-	11/02/81	Pocatello	ID	83201	Virgil L. Miller
MC064186	3	05/14/82	Pocatello	ID	83201	Aberdeen Truck Line
MC140012	3	09/21/81	Preston	ID	83263	James O. Jenkins
MC147639	3	02/22/82	Twin Falls	ID	83301	Sundown Farms, Inc.
MC150236	-	09/21/81	Lewiston	ID	83501	Northwest Enterprises
MC116730	3	01/15/81	Lewiston	ID	83501	Stoltenberg Trucking Co., Inc.
MC148709	3	09/21/81	Nampa	ID	83651	D & H Trucking Co., Incorporated
MC147401	3	06/05/81	Nampa	ID	83651	Richard W. Stiehl Trucking, Inc.
MC139213	3	11/29/81	Welser	ID	83672	Harold H. Davies
MC134749	3	07/02/81	Weiser	ID	83672	Dawson Trucking, Inc.
MC146648	3	01/08/82	Boise	ID	83706	Nimco Trucking Inc.
MC003486	3	04/26/82	Boise	ID	83707	Compton Transfer & Storage Co.
MC118916	3	06/22/82	Sandpoint	ID	83864	Powell, Leonard L.
MC118916	3	06/22/82	Sandpoint	ID	83864	Powell, Leonard L.
MC121271	3	01/19/81	Elk Grove	IL	60007	Kurgan Cartage Co., Inc.
MC143862	3	01/19/81	Elk Grove Village	IL	60007	Home Delivery, Inc.
MC148420	3	09/18/81	Barrington	IL	60010	R J. Produce Inc.
MC116616	3	06/08/82	Borrington	IL	60010	Carey Horse Vans, Inc.
MC041093	3	07/07/81	Highland Park	IL	60035	Rafferty Transfer & Storage Company
MC144526	3	11/25/81	Park Ridge	IL	60068	Metcor, Inc.
MC120326	3	12/04/81	Waukegan	IL	60085	Heritage Freight System, Inc.
MC144573	3	01/04/82	Northfield	IL	60093	El-Jen Transpot Co., Inc.
MC121286	3	12/18/80	Schiller Park	IL	60131	Norwood Cartage Company, Inc.
MC114546	3	05/28/82	Franklin Park	IL	60131	Northern Cartage Company
MC147383	3	03/30/82	Glendale Heights	IL	60137	R & G Carriers
MC098662	3	08/04/81	Bensenville	IL	60160	F F Express
MC154377	-	11/12/81	Schaumburg	IL	60193	H. O. J. Trucking, Inc.
MC150914	3	02/09/82	Crete	IL	60417	Illiana Distribution System, Inc.
MC138548	3	06/11/81	Dwight	IL	60420	Indianoaks Transportation Co.
MC145755	3	11/30/81	Lansing	IL	60438	D & L Cartage
MC101529	2	04/29/81	Morris	IL	60450	Valley Trucking Company
MC098536	2	05/21/82	Oak Lawn	IL	60453	Ranger Cartage Co Inc
MC150276	-	06/05/81	Bridgeview	IL	60455	3-M Motor Service Inc.

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MC010476	3	04/26/82	Thornton	IL	60476	Thornton Cartage Co Inc
MC085466	3	05/17/82	Wilmington	IL	60481	Rayburn Incorporated
MC098756	3	05/21/82	Aurora	IL	60505	Aurora Area Express
MC135915	3	10/26/81	Aunona	IL	60505	Coal City Transfer
MC070906	2	12/04/81	Downers Grove	IL	60515	Suburban Moving and Storage Co.
MC134793	3	01/19/81	Hinsdale	IL	60521	East-West Refrigerated Freight Lines, Inc.
MC150362	-	05/01/81	Hinsdale	IL	60521	Coaches, Inc.
MC004726	3	04/26/82	Naperville	IL	60566	Prager Storage & Van Co., Inc.
MC115921	3	04/29/81	Chicago	IL	60606	Chemical Salt Service, Inc.
MC120587	2	02/11/81	Chicago	IL	60608	Parnell Service Transport, Inc.
MC009211	3	04/29/81	Chicago	IL	60615	Majestic Warehouses, Inc.
MC121285	3	04/29/81	Chicago	IL	60620	Pullman Distributors, Inc.
MC120524	3	11/29/81	Chicago	IL	60625	S M S Transportation Co.
MC150862	-	12/14/81	Chicago	IL	60629	Krosniunas Albert
MC109344	2	12/04/81	Chicago	IL	60630	Security Motor Service
MC114816	2	05/28/82	Chicago	IL	60639	George H. Wolff Sons Inc.
MC121354	2	02/24/82	Evergreen Park	IL	60642	Worth Freight Lines, Inc.
MC111126	2	05/27/82	Chicago	IL	60657	Aigner & Sons, Inc., George
MC000870	2	07/27/81	Kankakee	IL	60901	Taylor Transfer Company, Inc.
MC140196	3	01/19/81	Chatsworth	IL	60921	Ace Cartage Co.
MC133142	3	04/06/81	Manteno	IL	60950	Smith Trucking Company
MC039751	3	01/19/81	Chana	IL	61015	City Cartage
MC119830	3	07/27/81	Sterling	IL	61081	Lambrecht Trucking Company, L. A.
MC099206	3	05/21/82	Rockford	IL	61101	Johnson Express Line
MC109611	2	10/16/81	Rockford	IL	61102	Over-Nite Motor Service Inc.
MC119362	3	11/05/81	Rockford	IL	61107	Dewall Trucking Service, Inc.
MC135674	1	07/21/81	Galesburg	IL	61401	B N Transport Inc.
MC120802	3	11/29/81	Chillicothe	IL	61523	Chillicothe Cartage, Inc.
MC005697	3	09/01/81	Farmington	IL	61531	Holmstrom, Kenneth
MC059623	3	11/12/81	Pekin	IL	61554	Interline Motor Freight, Inc.
MC124983	2	11/12/81	North Pekin	IL	61554	Newlun Transport Service
MC060076	3	05/14/82	Champaign	IL	61820	V. J. Warner & Son, Inc.
MC036587	3	05/29/81	Homer	IL	61849	Patton Trucking Co.
MC141346	3	12/01/81	Potomac	IL	61865	K. L. Cain Trucking Contractor
MC106656	3	05/24/82	Arcola	IL	61910	Smith Bros. Trucking
MC105306	3	05/24/82	Paris	IL	61944	Morris Van Lines
MC080756	3	05/17/82	Tuscola	IL	61953	Renner, James

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MC080767	3	11/12/81	Villa Grove	IL	61956	Mary E. Elbs
MC120852	3	01/09/81	Madison	IL	62060	Dorsey Truck Service, Inc.
MC092992	3	02/24/82	Pocahontas	IL	62275	Reinacher, Clarence W.
MC001448	3	02/19/82	Quincy	IL	62301	Canton-Quincy Transfer Inc.
MC127891	3	01/08/82	Girard	IL	62640	Girard Elevator Co.
MC058216	3	05/14/82	Springfield	IL	62702	McGary Transfer, Inc.
MC145329	3	11/29/81	Geff	IL	62842	Larry L. Smith
MC1427781	3	01/19/81	Elizabethtown	IL	62931	McDowell Trucking
MC120965	3	07/02/81	Jacob	IL	62950	L. & L. Truck Service, Inc.
MC148219	3	03/26/82	Carmel	IN	46032	Minority Transportation Inc.
MC127734	3	11/30/81	Lapel	IN	46051	Willie T. Flowers
MC149048	3	09/08/81	Indianapolis	IN	46205	J & J Contract Carriers, Inc.
MC035286	3	05/10/82	Indianapolis	IN	46221	Truck Line Distribution Systems, Inc.
MC155396	3	09/13/82	Demotte	IN	46310	Slegers Transport
MC143920	3	11/29/81	Demotte	IN	46310	Dekock Trucking, Inc.
MC143598	3	01/19/81	East Chicago	IN	46312	Euclid's Service
MC119963	3	01/19/81	Michigan City	IN	46360	Tomenko Service Garage
MC038214	3	11/23/81	Michigan City	IN	46360	Hatfield Transfer, J. R.
MC108414	3	12/14/81	Westville	IN	46391	Allen Bros
MC116972	3	12/04/81	South Bend	IN	46619	Rand's Delivery System, Inc.
MC118868	3	10/14/81	Berne	IN	46733	Rick-Con Trucking Co.
MC128262	3	11/19/81	Monroeville	IN	46773	F & G Trucking Company, Inc.
MC151712	-	12/21/81	Ft. Wayne	IN	46895	H & S Trucking, Inc.
MC134110	3	02/24/82	Denham	IN	46925	R & R Powers
MC124631	3	10/16/81	Star City	IN	46985	Moyer Grain Company, Inc.
MC107246	3	05/24/82	Wabash	IN	46992	Wabash Valley Moving & Storage, Inc.
MC010646	3	04/26/82	Bath	IN	47010	Widau, Faye
MC153946	-	06/04/82	Jeffersonville	IN	47130	Trailer Convoys, Inc.
MC147297	3	11/29/81	Muncie	IN	47303	Da-Ron Corporation
MC124217	3	07/27/81	Richmond	IN	47375	C H M Transport Inc.
MC106780	3	07/14/81	Richmond	IN	47375	Robert M. Peka
MC140298	3	12/14/81	Ellettsville	IN	47429	Ben Olsson Trucking
MC144904	3	07/27/81	West Lafayette	IN	47906	Frontier Freight Lines, Inc.
MC154506	-	12/21/81	Fair Oaks	IN	47943	Evans & Cassell Enterprises, Inc.
MC127813	3	11/12/81	Waynetown	IN	47990	Legg Farm Service
MC033120	3	01/12/81	Bendena	KS	66008	Tilbury Truck Line

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MC116086	2	06/08/82	Lawrence	KS	66044	Lawrence Freight Line Inc.
MC066507	3	04/06/81	Louisburg	KS	66053	Karl Bowes
MC030424	3	04/29/81	Olathe	KS	66061	Hunter, Calvin
MC015876	3	04/28/82	Pomona	KS	66076	Miller, Roy A.
MC105836	3	05/24/82	Troy	KS	66087	Walter Trucking, Robert
MC118166	3	06/11/82	Kansas City	KS	66105	Hurst, Inc.
MC119216	3	06/22/82	Merriam	KS	66203	Wiliker Motor Company
MC119216	3	06/22/82	Merriam	KS	66203	Wiliker Motor Company, A Kansas Corporation
MC156346	-	06/18/82	Merriam	KS	66203	Boyer Trucking
MC129675	3	04/21/81	Shawnee Mission	KS	66207	Cheese Express, Inc.
MC052925	3	04/29/81	Junction City	KS	66441	Melvin Clarence Champ
MC073016	3	05/17/82	Lyndon	KS	66451	Beatty Truck Line
MC030986	3	05/10/82	Manhattan	KS	66502	Reliable Transfer and Storage Company, Inc.
MC066756	3	10/16/81	Sabetha	KS	66534	Midlands Transportation Company
MC116879	3	01/15/81	Sabetha	KS	66534	Bestwick Inc.
MC104141	3	07/02/81	St. Marys	KS	66536	Kincaid Truck Line
MC050866	3	05/14/82	Scranton	KS	66537	Burlingame Truck Line Inc
MC116266	3	06/08/82	Topeka	KS	66603	Topeka Radiator & Body Works, Inc.
MC060177	3	02/19/82	Ft. Scott	KS	66701	Post and Danley Truck Line Inc.
MC005116	3	04/26/82	Thayer	KS	66776	John, James D.
MC105716	3	05/24/82	Dunlap	KS	66848	Mark Truck Service
MC144565	3	11/12/81	Wichita	KS	67233	Clark Transportation & Enterprises
MC026376	3	05/07/82	Sedan	KS	67361	Steen K Lister
MC044484	3	04/29/81	Salina	KS	67401	Weathers Inc
MC145068	3	11/29/81	McPherson	KS	67460	D.O.T. Trucking, Inc.
MC147892	3	06/05/81	McPherson	KS	67469	D.O.T. Trucking, Inc.
MC115366	3	06/08/82	Hutchinson	KS	67501	Covan World-Wide Moving, Incorporated
MC143961	3	07/31/81	Ellinwood	KS	67526	Jab Trucking Company
MC108066	3	05/26/82	Great Bend	KS	67530	H & K Truck Lines
MC154698	-	02/16/82	Hays	KS	67601	Leo S. Dorzweiler
MC129298	3	04/27/82	Liberal	KS	67901	Ponting, Jess W.
MC014706	3	04/28/82	Liberal	KS	67901	Kelley Transport, Inc., C. W.
MC150112	3	09/21/81	Louisville	KY	40215	Flexible Transport, Inc.
MC138433	3	05/27/81	Mt. Vernon	KY	40456	Hubbard Transfer
MC111456	3	05/27/82	Nicholasville	KY	40504	All American Moving & Storage Co.

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MC076264	2	06/09/82	Frankfort	KY	40601	Webb Transfer Line, Inc.
MC125883	3	09/01/81	Harlan	KY	40831	Harbell Lines
MC053746	3	05/14/82	Covington	KY	41012	Dahlenburg, E. R.
MC029666	3	05/07/82	Ashland	KY	41101	Move Rite Transfer & Storage Co. Inc.
MC138745	1	06/19/81	Catlettsburg	KY	41129	Appalachian Transport, Inc.
MC111166	3	05/27/82	Pikeville	KY	41501	East Kentucky Theatre Service Inc.
MC138072	3	11/05/81	Allen	KY	41601	May Trucking Company, Inc.
MC113626	3	05/28/82	Fulton	KY	42041	Hicks, Robert J.
MC104966	3	05/24/82	Hickman	KY	42050	Stokes Transport, Inc., Fred
MC099776	3	09/04/80	Hopkinsville	KY	42240	Buckner Trucking Inc.
MC139855	3	11/05/80	Olmstead	KY	42265	Hiteland Farms
MC145725	3	06/05/81	Corydon	KY	42406	National Raysar Courier Corp.
MC013806	2	04/28/82	Madisonville	KY	42431	Virginia Hauling Co
MC141275	-	09/21/81	New Orleans	LA	70126	Diaz Trucking Company
MC134985	3	04/21/81	Houma	LA	70360	Bourg Brothers Moving & Storage Company
MC147355	3	06/05/81	Amite	LA	70422	Tyger Livestock, Inc.
MC118236	3	06/11/82	Franklinton	LA	70438	Southern Truck Lines, Inc.
MC144571	3	09/21/81	Iota	LA	70543	Alh
MC139500	3	06/30/81	Reeves	LA	70658	Charles W. Williams
MC158162	3	08/30/82	West Monroe	LA	71291	Con Pac, Inc.
MC096216	3	10/26/81	Palmer (Three Rivers)	MA	01080	Fontaine Trucking Company, Inc.
MC099436	3	05/21/82	West Springfield	MA	01089	A-C Motor Express, Inc.
MC034396	3	06/30/81	Long Meadow	MA	01106	Gloth Transfer Co.
MC040006	3	05/10/82	Springfield	MA	01108	Bert Hill's Express, Inc.
MC030516	3	05/07/82	Springfield	MA	01108	Smith, William J.
MC047686	2	05/14/82	Great Barrington	MA	01230	Kimball's Motor Dispatch Inc
MC069656	3	05/14/82	Great Barrington	MA	01230	James T. Collingwood
MC058940	3	07/21/81	Greenfield	MA	01301	Clapp, Inc., L. E.
MC094477	3	07/21/81	Fitchburg	MA	01420	Ray Powers Corp
MC097326	3	05/21/82	East Pepperell	MA	01437	Special Delivery Service, Inc.
MC058946	2	05/14/82	Dudley	MA	01570	P Wajer & Sons Express, Co., Inc.
MC048571	3	12/04/81	Webster	MA	01570	Pratt Trucking, Ed.
Mc023576	3	05/07/82	Worchester	MA	01609	Dickie & Sons, Inc., Edward A.
MC008589	3	08/04/82	Framingham	MA	01701	E. F. Gould & Son, Inc.
MC048022	1	08/22/80	Marlboro	MA	01752	Inland Express Inc

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MC074056	3	05/14/82	Sudbury	MA	01776	Saxonville Wholesale Lumber Warehouse Co., (A Corp)
MC047563	3	12/04/81	Haverhill	MA	01830	Haverhill Movers, Inc.
MC090147	3	07/02/81	Haverhill	MA	01830	Hopkins & Carlson
MC113236	3	05/28/82	Lawrence	MA	01841	Royal Packing Co.
MC098066	2	05/21/82	Lawrence	MA	01842	E.W. Fraser, Inc.
MC118366	3	06/11/82	Nabnasset	MA	01861	Lee R. Shawcross
MC098166	3	05/21/82	Tyngsboro	MA	01878	Johnson's Nahant Express
MC145159	3	06/05/81	Andover	MA	01884	Rumac Transportation
MC004756	3	04/26/82	Lynn	MA	01905	O'Donnell Movers Inc
MC034795	3	05/10/82	Peabody	MA	01960	Georges Transportation Co.
MC151469	-	01/20/82	Peabody	MA	01960	Peter Ball Express, Inc.
MC151838	-	04/28/82	Hingham	MA	02018	J.J. Sullivan and Sons, Inc.
MC049088	3	01/19/81	Hingham	MA	02043	Venti's Boston and Quincy Express Co., Inc.
MC008496	3	04/26/82	Norwood	MA	02062	Towne's Express
MC099372	3	01/08/82	Stoughton	MA	02072	Stoughton Auto Express, Inc.
MC098596	3	05/21/82	Boston	MA	02101	D & S Freight Service, Inc.
MC058706	3	05/14/82	East Boston	MA	02128	Wilson Trucking Company
MC015776	3	04/28/82	Boston	MA	02130	Fraser & Walker, Inc.
MC116866	3	06/08/82	Cambridge	MA	02139	Pat's Tow Service Inc.
MC058472	3	05/27/81	East Cambridge	MA	02141	Bezanson Transportation Co., Inc
MC011528	2	06/30/81	Malden	MA	02148	Statewide Trans., Inc.
MC147394	3	09/21/81	Everett	MA	02149	Coastal Refrigerated Service, Inc.
MC099282	3	12/04/81	Revere	MA	02151	Mosher Inc. W. Fred
MC078046	3	05/17/82	Winthrop	MA	02152	Bangs & Sons, Inc. H. N.
MC008536	3	04/26/82	Arlington	MA	02176	Smith & Miller Moving Co., Inc.
MC115506	3	06/08/82	So Braintree	MA	02185	Northern Explosives Corp.
MC116326	3	06/08/82	Milton	MA	02187	Hendrie's Inc.
MC067216	1	05/14/82	Avon	MA	02322	Beacon Fast Freight Company, Inc.
MC099623	3	08/25/82	Hanover	MA	02339	Griffin & Sons, Inc., James E.
MC032636	3	05/10/82	Plymouth	MA	02360	Sampson-Plymouth Express
MC055926	3	05/14/82	Kingston	MA	02364	Shiretown Transportation Co., Inc.
MC097776	3	05/21/82	Oak Bluffs	MA	02557	Rogers Freight and Trucking Service, Inc.
MC107286	3	05/24/82	South Attleboro	MA	02703	M. Pascale Trucking, Inc.
MC097886	3	05/21/82	New Bedford	MA	02740	A. Adams Trucking, Inc.
MC074486	3	05/17/82	Taunton	MA	02780	McCabe Sand & Gravel Company, Inc.

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MC109856	3	05/26/82	Gaithersburg	MD	20760	Mercury Van Service, Inc.
MC141322	3	01/23/81	Silver Spring	MD	20904	Montgomery X-Ray Trnsportation, Inc.
MC149038	3	09/21/81	Harve De Gray	MD	21078	Harve De Grace Transportation Inc.
MC101696	3	05/24/82	Millersville	MD	21108	Charles Robert Phelps
MC114843	3	04/26/82	Whiteford	MD	21160	John Allen Morris
MC121348	2	11/19/81	Baltimore	MD	21202	Cap Trucking Co., Inc.
MC126893	3	06/11/81	Baltimore	MD	21223	Baltimore-Washington Express Service, Inc.
MC063756	3	05/14/82	Baltimore	MD	21224	Smith & Schmidt
MC110461	3	04/29/81	Baltimore	MD	21226	Cargo Transport
MC112556	3	05/27/82	Cumberland	MD	21502	Bachman Transfer & Storage, Inc.
MC125430	3	06/11/81	McHenry	MD	21541	Wagner Trucking, Inc.
MC005326	3	04/26/82	Galena	MD	21635	Dill Bros. Company
MC113756	3	05/28/82	Big Spring	MD	21712	Gehr, Joseph W.
MC128222	3	09/15/81	Hagerstown	MD	21740	Spartan Transport, Inc.
MC124555	3	08/28/81	Taneytown	MD	21787	Francis E. Reaver
MC133498	3	01/12/81	Pocomoke City	MD	21851	Great Coastral Carriers, Inc.
MC128311	3	04/06/81	Peace Valley	MD	65788	Garland H. Christian and Rennie Horn
MC147269	3	06/05/81	W. Cumberland	ME	04021	K-Line Enterprises
MC110833	3	08/28/81	Portland	ME	04111	Maine Furniture Storage Company
MC148492	3	06/05/81	Dixfield	ME	04224	Lyle R. White
MC147416	3	09/21/81	Dixfield	ME	04224	Greaton Richard A.
MC142221	3	06/11/81	Ellsworth	ME	04605	McAuley Trucking Company, Inc.
MC028806	3	05/07/82	Southwest Harbor	ME	04679	Acadia Express Company Inc (ME Corp)
MC147249	3	06/05/81	Mapleton	ME	04757	Breneman Melvin C.
MC005456	3	04/26/82	Pontiac	MI	48058	O'Dell-McKenzie Cartage Company
MC111796	3	05/27/82	Monroe	MI	48161	Duffy Towing
MC145876	3	06/05/81	Romulus	MI	48174	T.C.B. Trucking Inc.
MC121621	3	01/19/81	Saline	MI	48176	Saline Cab Co.
MC151603	3	11/12/81	Whitmore Lake	MI	48189	J.B. Arabians
MC117788	3	06/04/82	Ferndale	MI	48220	Detroit Refrigerated Trucking, Inc.
MC147854	3	11/12/81	Redford	MI	48239	Contact Cartage Company, Inc.
MC105206	3	05/24/82	Dryden	MI	48428	Cross-Tie Horse Vans, Inc.
MC112590	3	04/06/81	Flint	MI	48504	United Motor Freight Inc.

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MC141794	3	06/18/82	Saginaw	MI	48605	Aladdin Tours, Inc.
MC020656	3	05/07/82	Lansing	MI	48912	D & C Storage Company, Inc.
MC007060	3	06/11/81	Kalamazoo	MI	49006	Burgess Transfer
MC075206	3	05/17/82	Bangor	MI	49013	Emmert Transfer
MC111522	3	07/19/82	Dowagiac	MI	49047	Walker's Moving & Storage
MC110645	3	11/23/81	Hillsdale	MI	49242	Hillsdale Cartage Inc.
MC046086	3	05/13/82	Hillsdale	MI	49242	Schmitt, Frank Miller
MC136705	3	12/04/81	Grandville	MI	49418	Mic-Ways Company
MC151769	-	12/10/80	Grand Rapids	MI	49506	American Eagle Lines, Inc.
MC146139	3	01/19/81	Leland	MI	49654	Bay Sanitation Inc.
MC120731	2	02/24/82	Detour Village	MI	49725	Raymond Kielbasa
MC099076	3	05/21/82	Sault Ste Marie	MI	49783	Weir Moving & Storage, Inc.
MC017426	3	04/29/82	Marquette	MI	49855	Nystrom's Moving & Storage, Inc.
MC116646	3	06/08/82	Laurium	MI	49913	Fontana Trucking, Inc.
MC097696	3	05/21/82	Center City	MN	55012	Peterson Transfer
MC058116	1	05/14/82	St. Paul	MN	55165	Modern Motor Express, Inc.
MC129440	3	01/19/81	Burnsville	MN	55337	Pixie Frozen Foods, Inc.
MC144297	3	01/19/81	Shakopee	MN	55379	Durgin Trucking, Inc.
MC062136	3	05/14/82	Minneapolis	MN	55401	Cedar Van Lines, Inc.
MC141770	3	11/12/81	Minneapolis	MN	55402	TPC Transportation Company
MC111356	3	05/27/82	Minneapolis	MN	55414	Koehler Service Garage, Inc.
MC103266	3	05/24/82	Grand Marais	MN	55604	Smith, Jewel E.
MC119116	3	06/22/82	Duluth	MN	55802	Lake City Auto Parts Company
MC119116	3	06/22/82	Duluth	MN	55802	Lake City Auto Parts Company
MC113922	3	10/16/81	Kenyon	MN	55946	Erickson, Darvin
MC088936	3	05/17/82	Winona	MN	55989	Nankivil Moving & Storage Company
MC016336	3	04/28/82	Blue Earth	MN	56013	Meyers Transfer
MC138484	3	04/06/81	New Richland	MN	56072	Shurson Trucking Co.
MC119331	3	10/16/81	New Ulm	MN	56073	Filzen, Raymond C.
MC148217	3	09/21/81	Waseca	MN	56093	Tipton Trucking
MC088356	3	05/17/82	Chandler	MN	56122	Vos, Floyd
MC150152	-	09/21/81	Worthington	MN	56187	Doug's 66 Service
MC136896	3	08/25/81	Worthington	MN	56187	T. F. T., Inc.
MC149490	3	07/08/81	St. Cloud	MN	56301	Maiers Transport & Warehousing, Inc.
MC142937	3	12/14/81	Parkers Prairie	MN	56351	Carlson Trucking
MC125660	3	11/12/81	Sauk Rapids	MN	56379	Kosloske Motor Co.
MC138097	3	07/21/81	Ironton	MN	56455	Kagel Trucking

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MC129486	-	06/11/81	Moorhead	MN	56560	Berg Grain and Produce
MC101136	3	05/24/82	Ulen	MN	56585	Leinum, Evert
MC151081	3	11/12/81	Pacific	MO	63069	Don Avery Trucking
MC003772	2	04/26/82	St. Louis	MO	63103	P J Hamill Transfer Co
MC014641	1	07/21/81	St. Louis	MO	63106	Lueking Transfer Co Inc
MC096016	3	05/20/82	St. Louis	MO	63106	Jerome Motor Service Company
MC111886	3	05/27/82	St. Louis	MO	63110	Moeller Drayage, Inc.
MC084296	3	05/17/82	St. Louis	MO	63118	Knoll Moving Company
MC148179	3	07/02/81	St. Louis	MO	63122	V.S. Enterprises, Inc.
MC138430	3	06/11/81	St. Louis	MO	63125	Dixie Truck Line, Inc.
MC084791	3	12/23/81	St. Louis	MO	63125	St. Louis Transfer Co.
MC129745	3	08/28/81	Altenburg	MO	63732	B & R Trucking Company, Inc.
MC128250	3	12/04/81	Sikeston	MO	63801	Kenneth Eugene Nanney Trucking
MC070006	3	05/14/82	Lee's Summit	MO	64063	Burry Truck Line
MC000999	3	01/08/82	Warrensburg	MO	64093	Zink Truck Service
MC155090	-	02/24/82	Kansas City	MO	64101	S & T Trucking Co., Inc.
MC052666	2	05/14/82	Kansas	MO	64105	Kansas City Southern Transport Co Inc
MC144007	3	01/19/81	Kansas City	MO	64110	Lift Truck Cartage Service, Inc.
MC129885	3	10/02/81	Kansas City	MO	64141	Chet's Tow Service, Inc.
MC106401	1	06/09/81	Kansas City	MO	64141	Johnson Motor Lines Inc.
MC152500	-	12/22/81	Kansas City	MO	64195	Owners Transport
MC138034	3	12/21/81	Helena	MO	64459	Harry Mahlandt
MC097058	3	01/04/82	Oregon	MO	64473	K & M Truck Line
MC121534	2	06/05/81	St. Joseph	MO	64502	Cashmere Transfer Company
MC118196	3	06/11/82	Carthage	MO	64836	Raye & Company Transports, Inc.
MC139260	3	05/27/81	Jefferson City	MO	65101	Rehagen Truck Line, Inc.
MC081724	3	03/15/81	Centralla	MO	65240	Schmidt Truck Line
MC146257	3	05/19/82	Cuba	MO	65453	Voss Towing
MC088826	3	05/17/82	Vienna	MO	65582	Stratman Truck Service
MC089913	1	10/05/82	Springfield	MO	65803	Frisco Transportation Co
MC159402	3	08/19/82	Springfield	MO	65803	B & H Trucking, Inc.
MC127533	3	01/15/81	Springfield	MO	65803	Richardson Transport, Inc.
MC144680	3	06/11/81	Greenville	MS	38701	American River Lines, Inc.
MC136976	3	08/19/80	Clinton	MS	39056	Gulf States Canners, Inc.
MC147250	3	09/21/81	Florence	MS	39073	Pearl Mobile Home Repair, Inc.
MC150940	-	09/21/81	Jackson	MS	39204	L & M Trucking Co., Inc.
MC148514	3	06/05/81	Pearl	MS	39208	W W Trucking

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MC143216	3	11/17/81	Jackson	MS	39208	Andrew Denton
MC115092	2	12/23/82	Billings	MT	59101	Tomahawk Trucking, Inc.
MC129386	2	01/22/81	Billings	MT	59102	Refrigerated Trucks, Inc.
MC148004	3	06/05/81	Billings	MT	59107	Barker Trucking
MC062006	3	05/14/82	Miles City	MT	59301	Lantis Truck Lines
MC128482	3	10/30/81	Helena	MT	59601	Helena Transfer & Storage Company
MC070176	3	05/14/82	Butte	MT	59701	Kitto's Transfer & Storage, Inc.
MC129287	3	07/22/80	Missoula	MT	59801	Eugene Tripp
MC124505	2	07/22/80	Missoula	MT	59801	Eugene Tripp Trucking
MC144852	3	08/30/82	Missoula	MT	59801	Sirco Trucking
MC128694	3	07/27/81	Darby	MT	59829	L Hangin T Enterprises
MC097906	3	05/21/82	Mount Airy	NC	27030	Federal Motor Express
MC107276	2	05/24/82	Winston-Salem	NC	27103	Quality Oil Transport
MC003986	3	04/26/82	Sanford	NC	27330	Johnson's Express, Inc.
MC156094	-	11/27/81	Greensboro	NC	27406	Norwood Trucking Company
MC146077	3	12/15/81	Greensboro	NC	27410	Cargo Carriers, Inc.
MC140338	3	06/30/81	Louisburg	NC	27549	Franklin Milling Company, Inc.
MC154697	3	04/10/81	Wilson	NC	27893	Baker Truck Leasing & Sales, Inc.
MC155573	3	10/30/82	Concord	NC	28025	M S R Trucking, Inc.
MC003804	3	06/30/81	Gastonia	NC	28052	Wilson Transfer Co Inc
MC147795	3	09/21/81	Lincolnton	NC	28092	Bruner Transfer & Storage, Inc.
MC115176	3	06/08/82	Salisbury	NC	28144	Swing Transport, Inc.
MC146018	3	12/15/81	Charlotte	NC	28203	Penchant Enterprises
MC149203	-	06/05/81	Pembroke	NC	28372	Pembroke Trucking Co., Inc.
MC136359	3	09/13/82	Wilmington	NC	28402	Eastern Oil Transport, Inc.
MC145969	3	06/05/81	Lenoir	NC	28645	Hammary-A Division of U.S. Industries, Inc.
MC146644	3	12/25/81	Argusville	ND	58005	J. Kilfoyl Trucking
MC146582	3	06/23/81	Grafton	ND	58237	John Shereck & Sons
MC145938	3	06/05/81	Glenfield	ND	58443	Charlie McCullough Trucking
MC058212	3	05/27/81	Williston	ND	58801	Maas Transport, Inc.
MC061576	3	05/14/82	Decatur	NE	68020	Squires, Marvin W.
MC146866	3	09/21/81	Fremont	NE	68025	R. L. Riley Trucking
MC124106	3	10/16/81	Omaha	NE	68102	Midwest Mail Service, Inc.
MC115346	3	06/08/82	Omaha	NE	68107	Hansen Van & Storage, Arne R.
MC147625	3	12/21/81	Omaha	NE	68119	AAA Air Freight Enterprises, Inc.
MC098876	3	05/21/82	Syracuse	NE	68446	Syracuse Transfer
MC099266	3	05/21/82	Tecumseh	NE	68450	Tecumseh Transfer

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MC153520	3	08/25/81	Tecumseh	NE	68450	Charles Crane
MC092936	3	05/18/82	Bristow	NE	68719	T. & S. Trucking
MC025436	3	05/07/82	Concord	NE	68728	Nelson, Earl C.
MC065856	3	05/14/82	Creighton	NE	68729	Morrill, Robert
MC045886	3	05/13/82	Niobrara	NE	68760	Mackey, Willard P.
MC109646	3	05/25/82	Page	NE	68766	Heiss, Richard H.
MC147220	3	06/05/81	South Sioux City	NE	68776	Diesel Alley Transport, Inc.
MC146801	3	06/05/81	South Sioux City	NE	68776	Andersen Moving Service
MC135378	3	12/13/81	South Sioux City	NE	68776	Davenport Wrecker Service
MC088966	3	05/17/82	Spencer	NE	68777	B & H Transfer
MC060994	3	06/11/81	Wynot	NE	68792	Richard J Pinkelman
MC110589	3	07/06/82	Grand Island	NE	68801	J E Lammert Transfer Inc. (NEBR Corp
MC134475	3	07/13/82	Grand Island	NE	68801	Wheelers Distributing Co.
MC099326	3	05/21/82	North Platte	NE	69101	Hall H. Edwards
MC111346	5	05/27/82	Ogallala	NE	69153	Wade Bus Lines, Inc.
MC084756	3	05/17/82	Valentine	NE	69201	Valentine Motor Line
MC142474	3	06/09/81	Merrimack	NH	03054	Rochette's Oil Service
MC138725	3	07/01/80	Salem	NH	03079	Bob's Window Cleaning Service, Inc.
MC108756	3	05/26/82	Manchester	NH	03105	Ray The Mover of Manchester, Inc.
MC103016	3	05/24/82	Peterborough	NH	03452	Russell Trucking
MC110626	3	05/26/82	Dover	NH	03820	A & W
MC144834	3	11/23/81	Jefferson	NH	03853	William E. Wheeler
MC129243	3	06/05/81	Avenel	NJ	07001	T-Emp, Inc.
MC019496	3	05/07/82	East Avenel	NJ	07001	Brennan Bros., Inc.
MC034778	3	06/29/81	Bloomfield	NJ	07003	Cochran Terminal and Transportation Co.
MC143552	3	08/25/82	Caldwell	NJ	07006	Celewend Associates, Inc.
MC061342	3	12/18/80	Clifton	NJ	07011	A. C. Trucking Service, Inc.
MC059676	3	05/14/82	Cranford	NJ	07016	Roseville Trucking Corporation
MC136859	3	07/07/81	East Orange	NJ	07017	Shorter Leasing Corp.
MC127978	3	02/16/82	Garfield	NJ	07026	Newprint Trucking Co.
MC001376	3	05/19/82	Garfield	NJ	07026	Zurey's Express, Inc.
MC003825	3	04/06/81	Garfield	NJ	07026	L & V Trucking Co
MC118326	3	06/11/82	Hoboken	NJ	07030	J. Pitman Co., Inc.
MC076946	3	05/17/82	South Kearny	NJ	07032	Major Van Lines, Inc.
MC045476	3	05/13/82	North Arlington	NJ	07032	R & J Trucking Company

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MC150662	-	09/21/81	Kearny	NJ	07032	Louis J. Kennedy Trucking Co.
MC0085261	3	04/26/82	Linden	NJ	07036	Mid Jersey Van & Storage
MC029660	3	12/18/80	Linden	NJ	07036	Herman Lozowick Trucking Co
MC110941	3	09/24/81	Linden	NJ	07036	Villani Bros. Trucking, Inc.
MC008516	2	04/26/82	North Bergen	NJ	07047	Tomlinson Brothers, Incorporated
MC095926	3	05/20/82	Orange	NJ	07050	Thomas S. San Giacomo, Inc.
MC123141	3	06/17/81	Passaic	NJ	07055	Garfield Express Co., Inc.
MC136372	3	03/26/82	Passaic	NJ	07055	B & B Truck Leasing & Storage Co.
MC107141	3	08/25/81	Passaic	NJ	07056	Red Ball Trucking Co., Inc.
MC004186	3	04/26/82	Millburn	NJ	07062	Maplewood Transfer & Storage Co
MC016003	3	07/14/81	Avenel	NJ	07065	Tucker's Express
MC116836	2	06/08/82	Rahway	NJ	07065	Elgin Trucking Co Inc.
MC106528	3	10/16/81	Lyndhurst	NJ	07071	Liberty Parcels, Limited
MC092976	3	05/18/82	Lyndhurst	NJ	07071	Nova's Express, Inc.
MC009876	3	04/26/82	Carlstadt	NJ	07072	National Transport 101
MC008116	3	04/26/82	South Orange	NJ	07079	H & L Trucking Co Inc
MC094046	3	05/20/82	Union City	NJ	07087	Union City Warehouses
MC074323	3	07/14/81	Union City	NJ	07087	Wm J Walsh & Sons
MC039606	3	05/10/82	West New York	NJ	07093	Enterprise Express & Truckman, Inc.
MC011018	1	06/30/81	Secaucus	NJ	07094	Service Transp Co
MC030226	1	05/07/82	Secaucus	NJ	07094	Howell Trucking Co Inc
MC138766	3	11/23/81	Secaucus	NJ	07094	Tee Jay Delivery
MC007597	2	06/30/81	Newark	NJ	07102	Asbestos Transportation Company Inc.
MC065106	3	05/14/82	Newark	NJ	07104	Foglia Bros Inc (N J Corp)
MC043328	3	07/27/81	Newark	NJ	07105	Kellett & Sons, Inc., William
MC096486	3	05/20/82	Newark	NJ	07107	Jackson's Trucking
MC025476	3	05/07/82	Nutley	NJ	07110	Mallard Trucking Company
MC068626	3	05/14/82	Hillside	NJ	07205	Holland Trucking Corp.
MC003256	3	04/26/82	Jersey City	NJ	07302	Burkam Brothers Inc.
MC126257	3	12/01/81	Jersey City	NJ	07302	G. K. Trucking Co.
MC133087	3	07/07/81	Jersey City	NJ	07304	Woodward Transport Corp.
MC136670	2	06/11/81	Jersey City	NJ	07305	Conboy Trucking Corp.
MC136423	3	01/15/81	Jersey City	NJ	07306	Empire Direct Shippers, Inc.
MC116386	3	06/08/82	Franklin	NJ	07416	Clark Trucking Co.
MC141964	3	10/08/82	West Paterson	NJ	07425	American Interstate Motor Freight
MC036426	3	05/10/82	Ramsey	NJ	07446	Adams World Wide Movers, Inc.

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MC092366	3	05/18/82	Wayne	NJ	07470	Ro-Lynn Carrier Company
MC080906	3	05/17/82	Paterson	NJ	07501	William J Vernay & Son
MC103486	3	05/24/82	Paterson	NJ	07501	McDonald Company, R. H.
MC030816	3	05/10/82	Passaic	NJ	07501	B & B Trucking & Storage Co
MC009976	3	04/26/82	Paterson	NJ	07503	South Paterson Trucking Co Inc
MC059626	3	05/14/82	Paterson	NJ	07503	McGill's Interstate Express, Incorporated
MC045341	3	07/07/81	Hackensack	NJ	07606	North Garden State Moving and Storage, Inc.
MC095167	3	11/23/81	So Hackensack	NJ	07606	Borough Express, Inc.
MC141542	3	07/09/81	Lodi	NJ	07644	Am-Truck
MC061896	3	05/14/82	New Milford	NJ	07646	Bergenfield Moving & Storage Co Inc
MC127994	3	11/23/81	Saddle Brook	NJ	07662	John Hanley
MC093903	3	06/11/81	Manalapan Town	NJ	07726	Anderson's Trucking Corp
MC037432	3	01/04/82	Freehold	NJ	07728	Charms Company
MC111176	3	05/27/82	Middletown	NJ	07748	Banfield's Moving and Storage
MC073616	1	05/17/82	Neptune	NJ	07753	Bilkays Express Co
MC060846	3	05/14/82	Rumson	NJ	07760	Osmulski, Stanley
MC041556	3	05/13/82	West Long Branch	NJ	07764	Hoffman's Express
MC053426	3	05/14/82	Blairstown	NJ	07825	Wehrle Haulage Inc.
MC105946	3	05/24/82	Rockaway	NJ	07866	Crest Transport, Inc.
MC112786	3	05/27/82	Wharton	NJ	07885	Bartek Moving, John J.
MC148656	5	07/14/81	Haddonfield	NJ	08033	Continental Cab Company, Inc.
MC152529	-	06/04/82	Mickleton	NJ	08056	Justice Enterprise
MC144894	3	01/19/81	Absecon	NJ	08201	Brantley & Fisher Transport, Inc.
MC128335	3	06/11/81	Northfield	NJ	08225	Vola Moving & Trucking Co.
MC087661	3	06/09/81	Malaga	NJ	08328	Rich's Express, Inc.
MC145494	3	07/19/82	Mauricetown	NJ	08329	Edina Cartage Co.
MC127415	3	12/01/82	Mays Landing	NJ	08330	G. Taylor Trucking
MC117656	3	06/09/82	Atlantic City	NJ	08401	Atlantic City-Phila. Express, Inc.
MC036252	3	12/04/81	Highstown	NJ	08520	Green, Edmond J.
MC134100	3	10/16/81	Hightown	NJ	08520	Public Trucking Corp.
MC003816	3	04/26/82	Hopewell	NJ	08525	Castoro & Company, Inc.
MC029813	3	11/19/81	Kingston	NJ	08528	Tar Asphalt Service, Inc.
MC102886	3	11/05/81	Kingston	NJ	08528	Diabase Trucking Company
MC011988	3	04/23/81	Trenton	NJ	08605	Manning's Moving & Storage, Inc.
MC139565	3	08/25/81	Trenton	NJ	08638	Petry Express and Storage Co.

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MC129692	3	10/01/81	Brick Town	NJ	08723	Millar Trucking
MC086336	3	05/17/82	Delair	NJ	08801	Dabar Haulage Co Inc
MC144611	-	01/19/81	Bound Brook	NJ	08805	Bridgewater Transportation, Inc.
MC040896	3	05/13/82	East Brunswick	NJ	08816	Rutgers Express, Inc. (N. J. Corp)
MC032576	2	05/10/82	Edison	NJ	08817	D. E. Warehouse and Transportation Company
MC048176	3	05/14/82	Flemington	NJ	08822	Rich-Hil Transportation, Inc
MC154454	-	11/05/81	Old Bridge	NJ	08857	Larandae Services, Inc.
MC095126	3	05/20/82	Perth Amboy	NJ	08861	Borup & Sons
MC139115	3	10/07/81	Grants N	NM	97020	United Nuclear-Homestake Partners
MC147963	3	07/14/81	Albuquerque	NM	87105	J.O.N. Corporation
MC147682	3	06/25/81	Albuquerque	NM	87106	Montano Eloy
MC147564	3	06/25/81	Albuquerque	NM	87107	Pennington Sammy Jr.
MC148505	3	12/14/81	Albuquerque	NM	87192	Jackrabbit Motor Lines
MC022046	2	05/07/82	Hobbs	NM	88241	W M (Billy) Walker Inc
MC071446	3	05/17/82	Lovelock	NV	89419	Stinnett Trucking
MC149087	3	12/22/81	Reno	NV	89503	A-E-A Cowboy Express
MC152518	-	09/21/81	Reno	NV	89504	Seven Seas Transportation Co., Inc.
MC124311	3	07/21/81	New York	NY	10001	Bal-Gem Trucking Corp.
MC138120	3	08/28/81	New York	NY	10014	Vincent Saccente & Sons, Inc.
MC052516	3	05/14/82	New York	NY	10014	Shephard Warehouses, Inc.
MC066772	3	09/30/81	New York City	NY	10016	Park Plaza Movers, Inc.
MC103906	3	05/26/82	New York	NY	10018	Trinity Trucking Corp.
CM093176	3	05/18/82	New York	NY	10019	Seneca Moving and Storage, Inc.
MC114646	5	05/28/82	New York	NY	10033	Bloom's Taxi, Inc.
MC112566	3	05/27/82	New York	NY	10038	Astor Trucking Co.
MC011616	3	06/09/81	Staten Island	NY	10306	Dan's Express, Inc.
MC085922	3	04/06/81	Bronx	NY	10456	Carrier Van Lines, Inc.
MC023756	3	05/07/82	New York	NY	10459	Santini & Bros., Inc., J.
MC113196	3	05/28/82	Bronx	NY	10463	Parkway, Joe
MC083416	3	05/17/82	Bronx	NY	10473	Garufi Trucking Corp, J.
MC113586	3	05/28/82	Mount Vernon	NY	10550	Schiavo Pigeon Pullman
MC091416	3	05/18/82	Mount Vernon	NY	10552	Koepper Moving & Storage, Inc.
MC050081	3	09/24/81	Peekskill	NY	10566	Banker, Clarence W.
MC135956	3	07/02/81	Yonkers	NY	10703	A-1 Compaction, Inc.
MC127070	3	06/11/81	Yonkers	NY	10704	David Kaplan
MC094926	3	05/20/82	Yonkers	NY	10705	Goldberg & Son, J.

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MC037396	3	05/10/82	Yonkers	NY	10710	Bowling Green Storage & Van Co.
MC126098	3	07/02/81	West Nyack	NY	10994	Storms Trucking, Inc.
MC125755	3	06/11/81	Floral Park	NY	11001	H. K. Allen, Inc.
MC025461	3	01/02/81	Long Island City	NY	11101	Monroe Express Co Inc
MC135774	3	06/11/81	Brooklyn	NY	11201	Paige Trucking Corp.
MC112324	3	04/06/81	Brooklyn	NY	11204	Lella Bros.
MC041616	3	05/13/82	Brooklyn	NY	11208	Pacific Moving & Storage Corp.
MC042286	3	05/13/82	Brooklyn	NY	11211	Rizzo Trucking, Inc.
MC005466	3	0426/82	Brooklyn	NY	11211	Frank & Brothers Moving Co., Inc.
MC088866	3	05/17/82	Brooklyln	NY	11211	Convention Transport Corp.
MC026968	3	03/30/81	Brooklyn	NY	11222	Carl S Epps Trucking Inc
MC030766	3	05/10/82	Brooklyn	NY	11231	Alco Motor Trucking Corp
MC010366	3	04/26/82	East Northport	NY	11371	Harry Kipf Horse Transpo
MC147073	3	09/21/81	Woodside	NY	11377	Kruck Motor Line, Inc.
MC033556	3	05/10/82	Maspeth	NY	11378	James A Stevenson Co
MC032566	2	05/10/82	Maspeth	NY	11378	Long Island Motor Haulage Corporation
MC117116	3	06/08/82	Richmond Hills	NY	11419	Boat Carrier Corp.
MC096036	3	05/30/82	Alberton	NY	11507	Boro Lumber Hauling Corp.
MC117696	3	06/09/82	Rockville Center	NY	11570	Benincasa, Charles G.
MC128812	3	06/11/81	North Woodmere	NY	11581	Marpal Toy Distributors, Inc.
MC139523	3	03/17/82	Inwood	NY	11696	J. J & H Trucking Co., Inc.
MC038546	3	05/10/82	Babylon	NY	11702	Palm Trucking Distributors, Inc.
MC093666	3	05/18/82	Brookhaven	NY	11719	Patchogue Van Lines, Inc.
MC129667	1	07/02/81	Central Islip	NY	11722	Charro Trucking Corp.
MC049466	3	05/14/82	Farmingdale	NY	11735	Empire Van Lines, Inc.
MC063996	3	05/14/82	Kings Park	NY	11754	Gambard Service, Inc.
MC029796	3	05/07/82	Massepequa	NY	11758	Joseph Struzzieri
MC134864	2	12/22/81	Wantagh	NY	11793	Croner & Buehrmann, Inc.
MC129117	3	04/29/81	Plainview L I	NY	11803	John A. Lawlor
MC109606	3	05/25/82	Old Bethpage	NY	11804	Heavy Hauling and Rigging Corporation of America
MC119677	3	06/09/81	Glenmont	NY	12077	Harold C. Grumme
MC135492	3	04/29/81	Mechanicville	NY	12118	Northernair Freight Service, Inc.
MC127152	3	06/23/81	Valatie	NY	12184	Sal Martino
MC110796	3	05/26/82	Greenfield Park	NY	12435	Robert Constant

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MC147803	3	09/21/81	Rouses Point	NY	12979	Champlain Valley International Shippers & Receivers Association, Inc.
MC123130	3	07/21/81	Fulton	NY	13069	Joe Malambri
MC053676	3	05/14/82	Seneca Falls	NY	13148	Van Ditto Moving & Trucking, Inc.
MC148888	3	09/21/81	Dewitt	NY	13214	Madison Bulk Transport Inc.
MC064656	3	05/14/82	Utica	NY	13503	Broad Street Warehouse Corp.
MC037416	3	05/10/82	Endicott	NY	13760	Butler Trucking Co., Inc.
MC145148	3	04/16/82	Irving	NY	14081	Sutter Trucking and Equipment, Inc.
MC154663	-	11/27/81	Lancaster	NY	14086	C.G.K. Trucking, Inc.
MC082186	2	05/17/82	Springville	NY	14141	Nason's Delivery Inc.
MC021416	3	05/07/82	Buffalo	NY	14211	Ihrig & Son, Inc., Charles
MC065516	2	05/14/82	Kenmore	NY	14217	Buffalo Van & Storage, Inc.
MC093349	3	07/02/81	Kenmore	NY	14217	S.W.N.Y. Film Service, Incorporated
MC118766	3	08/25/81	Kenmore	NY	14217	Creighton Trucking, Norbert
MC144529	3	05/18/81	Niagara Falls	NY	14303	Buffalo Fuel Corp.
MC074846	2	05/17/82	Port Gibson	NY	14537	Lewis G. Johnson Inc.
MC146086	3	06/05/81	Rochester	NY	14605	M.E.N. Trucking
MC015199	3	04/16/82	Rochester	NY	14610	Dailey Moving & Storage Co., Inc., H. E.
MC000569	3	01/08/82	Jamestown	NY	14701	Youngsville Transfer, Inc.
MC034036	3	05/10/82	Olean	NY	14760	Southern Tier Moving and Storage, Inc.
MC127818	3	10/16/81	Ithaca	NY	14850	Freedman Contract Hauling Corp.
MC043656	3	05/13/82	Elmira	NY	14901	Dimon & Bacorn Inc.
MC107627	3	04/29/81	Newark	OH	43055	Newark Cartage Co.
MC023306	3	04/11/81	Lancaster	OH	43130	Keller & Weltner, Inc.
MC146639	3	06/05/81	Columbus	OH	43216	The Limited Stores, Inc.
MC147460	3	06/05/81	Columbus	OH	43229	Spartan Trucking
MC106036	2	05/24/82	Akron	OH	43312	Wm. Reynolds Trucking Co.
MC104076	3	05/24/82	Fayette	OH	43521	Pioneer and Fayette Railroad Company, The
MC051058	3	01/12/81	Sylvania	OH	43560	Eastern Van Service, Inc.
MC120715	3	06/10/81	Sylvania	OH	43560	The Theatre Transport Co.
MC062383	3	12/01/82	Toledo	OH	43624	A. B. C. Movers, Inc.
MC031436	3	08/25/81	Cambridge	OH	43725	Marks Transfer & Storage Company

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MC111826	3	05/27/82	Toronto	OH	43952	Bram Motor Express, Incorporated
MC110856	3	05/26/82	Cleveland	OH	44103	Package Distributers Inc.
MC079678	-	06/29/81	Cleveland	OH	44105	Ohio Movers and Storage Inc.
MC015866	3	04/28/82	Lakewood	OH	44107	Fridrich Moving And Storage Company, The WM.
MC108936	3	05/26/82	Cleveland	OH	44286	Special Transportation Inc.
MC076766	3	05/17/82	Akron	OH	44306	Dickson Moving and Storage, Inc.
MC128277	3	10/09/80	Akron	OH	44310	Waldorf Delivery
MC006696	3	04/26/82	Akron	OH	44312	Emerald Transfer and Rigging Co (A Corp)
MC075816	2	07/02/81	Canfield	OH	44406	Stony's Trucking Co.
MC138530	2	06/30/81	Cortland	OH	44410	C. O. P. Transport, Inc.
MC142787	3	07/02/81	Niles	OH	44446	Double L. Lines, Inc.
MC017233	3	07/13/81	Alliance	OH	44601	Alexander Moving and Storage Of Alliance, Ohio, In
MC076526	3	05/17/82	Canton	OH	44702	Mc Kinley Storage & Transfer Co., The
MC136164	3	07/07/81	New Riegel	OH	44853	Ohio Refrigerated Transport, Inc.
MC150512	3	07/31/81	Pylmouth	OH	44865	B & M Transit, Inc.
MC034366	3	05/10/82	Tiffin	OH	44883	Kerschner Moving & Storage Co., C. W.
MC0998821	3	06/22/81	Mansfield	OH	44901	Buckeye Storage Company, The
MC149242	-	06/05/81	Mansfield	OH	44903	Far East Trucking Inc.
MC134680	3	01/12/83	Hamilton	OH	45013	AAA Transportation, Incorporation
MC021684	2	07/02/81	Williamsburg	OH	45176	Charles E. Danbury Co. (A Corp.)
MC128471	3	07/21/81	Cincinnati	OH	45203	Lahmann Film Service, Inc.
MC147815	3	09/21/81	Dayton	OH	45407	Cargo Transport, Inc.
MC007166	2	04/26/82	Ottawa	OH	45875	Wilson Transp Serv Inc
MC099546	3	05/21/82	Perry	OK	73077	Frailey Inc., R. L.
MC056696	3	05/14/82	Oklahoma City	OK	73106	Merchants Delivery Service, Inc.
MC128012	3	01/15/81	Oklahoma City	OK	73107	McCormack Truck Lines
MC146296	3	06/05/81	Oklahoma City	OK	73109	Danco Oilfield Service Co.
MC121087	3	06/09/81	Oklahoma City	OK	73149	Explosives Carrier, Inc.
MC097606	3	05/21/82	Byron	OK	73723	Kirkpatrick Trucking Co.
MC105666	1	05/24/82	Woodward	OK	73801	J D Hodges Trucking Inc
MC111962	3	06/09/81	Tulsa	OK	74116	Able Van Lines, Inc.
MC146854	3	05/13/81	Tulsa	OK	74116	Midwestern Air Freight Express, Inc.

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MC099156	3	05/21/82	Muskogee	OK	74401	Muskogee Transfer & Storage Co
MC154104	3	02/24/82	Wagoner	OK	74467	Three Rivers Express, Inc.
MC117702	3	08/28/81	Earlsboro	OK	74840	Oliver, Denton
MC062176	3	05/14/82	Molalla	OR	97038	Fourier Truck Service, Inc.
MC107956	3	05/26/82	The Daues	OR	97058	Ralph's Transfer & Storage, Inc.
MC030046	3	05/07/82	Newberg	OR	97132	Scharff Motor Freight Inc
MC111396	3	05/27/82	Portland	OR	97202	Newhouse & Hutching Towing Service, Inc.
MC150504	-	09/21/81	Portland	OR	97202	Bill Steinfeld
MC039395	2	10/30/80	Portland	OR	97210	Nehalem Valley Motor Freight, Inc.
MC016766	3	04/28/82	Portland	OR	97214	Central Transfer & Storage Co.
MC052786	3	01/08/82	Portland	OR	97217	Eads Transfer and Storage Company
MC048423	3	07/23/81	Portland	OR	97217	Motor Transit, Inc. An Oregon Corp.
MC139310	3	07/23/81	Portland	OR	97217	Motor Transit Company
MC128575	3	06/11/81	Tigard	OR	97223	Golden West Trucking Co.
MC143979	3	09/21/81	Corvallis	OR	97330	Beaver State Moving & Storage, Inc.
MC147966	3	06/05/81	Newport	OR	97365	Gem Trucking
MC143992	3	09/21/81	Eugene	OR	97402	Lane County Moving & Storage, Inc.
MC127024	3	07/14/82	North Bend	OR	97459	Robert G. Banry
MC141562	3	09/21/81	Pendleton	OR	97801	Circle S Trucking, Inc.
MC152300	3	08/05/81	Baker	OR	97814	Pine-Eagle Freight Lines
MC108296	3	05/26/82	La Grande	OR	97850	Connie's, Incorporated
MC148677	-	07/14/81	Croydon	PA	09020	Cam Trucking
MC107726	3	05/26/82	Carnegie	PA	15025	Mississippi-East, Inc.
MC117233	3	07/13/81	Elizabeth	PA	15037	Mercury Motor Freight, Inc.
MC059156	3	05/14/82	Monongahela	PA	15063	Larkin Transport, Inc.
MC016940	3	05/14/82	Monongahela	PA	15063	Louttit Transfer
MC061567	3	05/14/82	Carnegie	PA	15106	Wiegmann Co., Inc.
MC027166	3	05/07/82	McKeesport	PA	15131	McLaughlin, F.
MC081086	3	05/17/82	Monroeville	PA	15146	Atlantic Northeastern Van & Storage Inc.
MC011036	3	04/26/82	Pittsburgh	PA	15202	William J Stack
MC054826	3	05/14/82	Pittsburgh	PA	15220	Louis L Grimm Inc
MC003876	3	04/26/82	Pittsburgh	PA	15221	Puhl & Falconer, Inc.
MC087786	2	05/17/82	Pittsburgh	PA	15222	Lighting Express, Inc.
MC121448	3	04/06/81	Pittsburgh	PA	15237	Fleming Transfer

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MC061344	3	01/09/81	Pittsburgh	PA	15238	Dicaprio, Jr., Raymond
MC011266	3	04/26/82	Washington	PA	15301	Anderson Transfer
MC125385	3	08/04/80	Cecil	PA	15321	Augie Passieu Trucking, Inc.
MC108076	3	05/26/82	Hickory	PA	15340	Cowden, John R.
MC021996	3	05/07/82	Uniontown	PA	15401	Reliable Transfer, Inc.
MC026066	3	05/07/82	Latrobe	PA	15650	Latrobe Moving and Storage Co.
MC061316	3	05/14/82	Windber	PA	15963	Escort Moving & Storage
MC115265	3	08/28/81	New Castle	PA	16101	Fowler Air Service
MC133112	2	11/17/81	Darlington	PA	16115	Veon Transportation Company
MC035086	3	05/10/82	Sugar Grove	PA	16350	John M. Peterson
MC061046	3	05/14/82	Fairview	PA	16415	Leininger & Son, R. R.
MC048286	3	05/14/82	North East Erie	PA	16428	W. Wayne Luke
MC074840	3	04/03/81	Erie	PA	16505	Johnson, Charles Ross
MC145484	3	08/25/81	Altoona	PA	16602	7-K Trucking
MC138240	3	04/06/81	Roaring Spring	PA	16673	Showalter Trucking
MC089436	3	05/18/82	Wellsboro	PA	16901	Tarszowicz, Joseph
MC102326	3	05/24/82	Coudersport	PA	16915	Gould, Donald E.
MC102883	3	05/18/81	Carlisle	PA	17013	Garland Inc., W. H.
MC112736	3	05/27/82	Glen Rock	PA	17327	Richard L. Seigman
MC117036	2	06/08/82	New Oxford	PA	17350	H. M. Kelly, Inc.
MC097366	3	05/21/82	Red Lion	PA	17356	Red Lion Transfer Company
MC143094	3	09/21/81	York	PA	17402	Ads Transportation, Inc.
MC146714	3	06/05/81	York	PA	17402	Shafco Interprises, Inc.
MC143220	3	10/14/80	East Earl	PA	17519	Conestoga Transit, Inc.
MC073796	3	05/17/82	Ephrata	PA	17522	Zimmerman & Sons, Inc., Roy W.
MC044616	3	05/13/82	Quarryville	PA	17566	Lester H. Warfel
MC127906	3	10/05/82	Lancaster	PA	17601	Robert N. Miley
MC074239	3	09/15/81	Williamsport	PA	17701	Stroehmann Brothers Company (PA Corp)
MC111077	3	06/07/82	Schuylkill Haven	PA	17972	Edw H. Shollenberger Sons Inc.
MC025338	3	09/15/81	Allentown	PA	18102	Hoch Trucking Co. Inc.
MC043828	3	12/18/80	Allentown	PA	18105	McFadden's Freight Line, Inc.
MC053066	2	05/14/82	Allentown	PA	18105	Diehl Storage Co.
MC124943	3	12/18/80	Moscow	PA	18444	Willard Stephens
MC138966	3	06/12/81	Scranton	PA	18504	Sutco, Inc.
MC077959	3	04/01/81	Scranton	PA	18504	Paff Trucking Company
MC096266	3	05/20/82	Scranton	PA	18504	Clune Transfer
MC022536	3	05/07/82	Scranton	PA	18505	McPeak Freight Lines, Inc.

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MC118032	3	06/05/81	Scranton	PA	18505	Primo Marianelli
MC096116	3	05/20/82	Scranton	PA	18510	Beppler, Earl R.
MC146806	3	06/05/81	Berwick	PA	18603	Chicago Contractors Supply, Inc.
MC148040	3	12/25/81	Sweet Valley	PA	18656	George Sahaluski
MC106116	3	05/24/82	Tunkhannock	PA	18657	Marabelli Trucking Lines, Theodore
MC051046	3	05/14/82	Susquehanna	PA	18847	Griffis, V. L.
MC024106	3	05/07/82	South Hampton	PA	18966	Garttmeyer Moving & Storage, Inc.
MC043666	3	05/13/82	Bryn Mawr	PA	19010	Special Motor Express of Penna. Inc.
MC056186	3	05/14/82	Chester	PA	19013	James C. Logan, Inc.
MC073366	3	05/17/82	Aston	PA	19014	Firpo's Moving & Storage
MC148747	3	12/25/81	Bensalem	PA	19020	D & E Transport Inc.
MC042556	3	05/13/82	Yardley	PA	19067	Bockin, J.
MC044156	3	05/13/82	Morton	PA	19070	J. C. Stilwell's Son
MC127495	2	06/11/81	Sharon Hill	PA	19079	Airline Freight, Inc.
MC151440	-	07/21/81	Wallingford	PA	19086	Fisher Commuter Express
MC147538	3	06/05/81	Philadelphia	PA	19102	Paramount Delivery Service, Inc.
MC135017	3	02/24/82	Philadelphia	PA	19107	Santa Claus Associated Trucking Ltd.
MC084732	3	05/27/81	Philadelphia	PA	19111	Dietrich Bros., Inc.
MC044142	3	07/02/81	Philadelphia	PA	19121	Scherr Motor Freight, Inc.
MC113886	3	01/09/81	Philadelphia	PA	19122	Kent Transfer Inc.
MC047656	3	05/13/82	Philadelphia	PA	19123	E Roseman Co Inc
MC074636	3	05/17/82	Philadelphia	PA	19124	Samuel W Smith Jr
MC017836	3	04/29/82	Philadelphia	PA	19125	Benjamin Inc., Charles
MC043709	3	11/23/81	Philadelphia	PA	19127	Atkinson, Inc.
MC023196	3	05/07/82	Philadelphia	PA	19129	Weiss Transportation Company
MC030396	3	05/07/82	Philadelphia	PA	19134	John F. Fowler Moving & Storage, Inc.
MC096136	3	05/20/82	Philadelphia	PA	19134	McCuen, Leroy, J.
MC029572	3	12/18/80	Philadelphia	PA	19135	McClain Moving Company
MC053076	3	05/14/82	Philadelphia	PA	19142	Thomas J Dukes Inc Pa Corp
MC128503	3	04/06/81	Philadelphia	PA	19143	Worldwide Pet Travel Service
MC126148	2	09/15/81	Philadelphia	PA	19148	A & E Trucking Company
MC042043	3	01/12/81	Downington	PA	19335	Petrella's Express
MC073756	3	05/17/82	Dowingtown	PA	19335	Brandywine Waste Paper Corp (PA Corp)
MC121161	3	06/11/81	Exton	PA	19341	Ryan Express

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MC117436	3	06/08/82	Glen Moore	PA	19343	Cornog Contract Carriers, Inc.
MC149044	3	06/05/81	Frazier	PA	19355	Frank C. Andrews
MC059348	3	04/29/81	Oxford	PA	19363	Brown's Express
MC060786	2	05/14/82	West Chester	PA	19380	Ralph G. Smith Inc.
MC075666	1	05/17/82	Conshohocken	PA	19428	Reading Transportation Company
MC118936	2	06/22/82	Conshohocken	PA	19428	Marinari Brothers
MC118936	2	06/22/82	Conshohocken	PA	19428	Marinari Brothers
MC152895	-	12/10/80	Pawtucket	RI	02860	T. Del Farno Trucking Co.
MC153305	-	01/05/81	Pawtucket	RI	02860	T. Del Farno Trucking Co.
MC099764	3	11/17/81	Lincoln	RI	02865	Law Trucking Company
MC073516	3	05/17/82	Warwick	RI	02886	Ray Arpin Moving & Storage, Inc.
MC098346	3	05/21/82	Providence	RI	02907	Viti Bros., Inc.
MC095236	3	05/20/82	Providence	RI	02908	Albanese Trucking Co., Inc., John
MC056956	3	05/14/82	Spartanburg	SC	29301	C and H Truck Lines, Inc.
MC153112	3	08/31/82	Spartanburg	SC	29303	Kenneth L. Horton
MC145756	3	06/05/81	Summerville	SC	29483	R & J Trucking Company, Inc.
MC140260	3	05/27/81	Yonges Island	SC	29494	Merry Shipping Company, Inc.
MC147495	3	06/05/81	Hartsville	SC	29550	Prestwood Trucking & Leasing Inc.
MC150291	-	09/21/81	Hartsville	SC	29550	Pee Dee Transport Co.
MC143211	3	06/05/81	Anderson	SC	29622	Ira Lee Walker
MC146095	3	04/03/81	Maudlin	SC	29662	McGee Ballenger Trucking Co. Inc.
MC142112	3	06/16/82	Garrretson	SD	57030	John Hulsebus, Jr.
MC142112	3	06/16/82	Garretson	SD	57030	John Hulsebus, Jr.
MC030036	3	05/07/82	Tyndall	SD	57066	Consumers Supply Company
MC013264	3	04/29/81	Viborg	SD	57070	Larsen, Rolland C.
MC024625	3	07/02/81	Volin	SD	57072	James R. Howe
MC095596	3	05/20/82	Sioux Falls	SD	57101	Harris Brothers
MC071106	3	05/17/82	Sioux Falls	SD	57103	Munce Bros. Transfer & Storage Co.
MC014716	3	04/28/82	Avon	SD	57315	TJeerdsma, Orvan
MC102570	3	11/12/81	Delmont	SD	57330	Fideler's Trucking
MC108496	3	05/26/82	Ethan	SD	57334	Wittstruck, Milo
MC135954	3	07/01/82	Fairfax	SD	57335	Jerome Koenig and Raymond Koenig
MC107614	3	05/19/82	Highmore	SD	57345	Zastrow Trucking
MC103076	3	05/24/82	Kimball	SD	57355	Gus Heath Trucking
MC0956201	3	04/29/81	Tripp	SD	57376	Eldon V. Hahn
MC141565	3	04/03/81	Kennebec	SD	57544	Central Transport, Inc.
MC106763	3	11/12/81	Wood	SD	57585	Ivil Lookabill
MC143090	3	06/05/81	Belle Fourche	SD	57717	Cobb Trucking

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MC113025	3	01/19/81	Whitewood	SD	57793	Williamson Brothers Trucking
MC145647	2	06/26/81	Eagleville	TN	37060	Mid-Tenn Express
MC065282	3	04/06/81	Lewisburg	TN	37091	Lewisburg Transfer Co Inc
MC057976	5	05/14/82	Nashville	TN	37208	Tennessee Trailblazers
MC134347	3	03/25/82	Nashville	TN	37214	Samuel M. Coker
MC152647	-	11/27/81	Nashville	TN	37218	Cato's 'Little Red Wagon' Truck Line
MC095726	3	05/20/82	Oolrwah	TN	37363	E.L. Fitzgerald, Jr.
MC016246	3	04/28/82	Johnson City	TN	37601	Ferguson Transfer Company Inc.
MC129586	3	12/04/81	Limestone	TN	37681	Gilford Broyles
MC106236	2	05/24/82	Knoxville	TN	37914	Blue Ridge Transportation Company, Incorporated
MC116736	3	06/08/82	Knoxville	TN	37920	Don Payne Trucking Company, Inc.
MC147535	3	06/05/81	Camden	TN	38320	Bobby R. Kelley Trucking
MC145776	3	06/05/81	Pinson	TN	38366	J. O. Lowrance
MC147860	3	06/05/81	Hohenwald	TN	38462	Bunch Ishmael L.
MC017000	2	04/28/82	Hohenwald	TN	38462	Hohenwald Truck Lines, Inc.
MC010168	3	07/02/81	Laurenceburg	TN	38464	David Dwight Winters
MC114558	3	06/09/81	Mount Pleasant	TN	38474	Cummins, W. A.
MC128265	3	12/04/81	Denison	TX	75020	Henry O. Smith
MC146335	3	05/17/82	Garland	TX	75040	Proctor Trucking Co.
MC152199	3	02/11/82	Irving	TX	75061	Velde Express, Inc.
MC117796	3	06/09/82	Dallas	TX	75227	Monico, Robert L.
MC153235	-	09/21/81	Dallas	TX	75240	Snowline
MC107993	2	08/25/82	Dallas	TX	75247	J J Willis Trucking Co
MC137009	3	01/15/81	Atlanta	TX	75551	John Heywood Thompson, Jr. and John Heywood Thompson, III
MC137027	3	01/15/81	Atlanta	TX	75551	John Heywood Thompson, Jr. and James Robert Smith
MC137029	2	01/15/81	Atlanta	TX	75551	John Heywood Thompson, Jr.
MC140175	3	07/20/82	Henderson	TX	75652	J. W. Burrows Company
MC143661	3	12/14/81	Palestine	TX	75801	Solar Transport, Inc.
MC141463	3	10/19/82	Arlington	TX	76011	J. C. Duncan Co., Inc.
MC106886	3	07/21/81	Weatherford	TX	76086	Thompson Horse Transportation Service, Inc.
MC151687	-	02/24/82	Ft. Worth	TX	76102	J L S Trucking
MC143260	3	01/15/81	Fort Worth	TX	76106	B & M Enterprises, Inc.
MC115186	3	06/08/82	Houston	TX	77001	Ramsey Trucking Co

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MC121356	3	07/21/81	Houston	TX	77015	Greens Bayou Transportation
MC146158	3	06/05/81	Houston	TX	77023	Effenson Enterprises
MC134455	2	10/26/81	Houston	TX	77055	Schoelman Lines of Texas, Inc.
MC151189	-	11/27/81	Cleveland	TX	77327	J. J. Garland
MC146120	3	12/15/81	Richmond	TX	77469	Donald Raye Davis
MC146661	3	06/01/81	Alvin	TX	77511	Josh, Inc.
MC136174	2	05/14/81	Hardin	TX	77561	Creel Trucking and Construction Company, Inc.
MC149169	3	06/02/81	Orange	TX	77630	Intercoastal Container Service Corp.
MC115526	3	06/08/82	San Antonio	TX	78206	Mexico & Carlsbad Caverns Motor Tours
MC067485	1	04/29/81	San Antonio	TX	78285	Mistletoe Express Service of Texas, Inc.
MC124169	3	06/11/81	Rivera	TX	78379	Kaufer and Blue, Inc.
MC129261	3	09/30/81	Corpus Christi	TX	78411	American Inc. Moving & Storage
MC150097	-	06/05/81	Bastrop	TX	78602	Ronald W. Cogburn
MC139487	2	09/01/81	Round Rock	TX	78664	Cobo, Inc.
MC085916	3	05/17/82	Schulenburg	TX	78956	Sher-Tex, Inc.
MC148662	3	12/22/81	Hereford	TX	79045	Ronald J. Vasek Trucking, Inc.
MC117556	2	06/09/82	Pampa	TX	79065	Keller & Co., Inc., E. M.
MC085938	2	06/17/81	Perryton	TX	79070	Larkey, E. W.
MC140879	3	07/19/82	Hereford	TX	79405	Ralph Owens
MC109006	-	05/26/82	Lubbock	TX	79415	W. K. Bigham & Sons, Inc.
MC093616	3	05/18/82	Monahans	TX	79756	Ingham, Inc.
MC136685	3	07/21/81	El Paso	TX	79901	Price's Transportation
MC155366	3	07/19/82	El Paso	TX	79915	Sawaya Trucking Company
MC134195	3	07/02/81	El Paso	TX	79940	C.H.B. Grain Co., Inc.
MC133995	3	11/03/80	Bountiful	UT	84010	Del W. Jensen
MC112076	2	05/27/82	Lehi	UT	84043	Thomas J. Peck & Sons, Inc.
MC139418	3	11/03/80	Salt Lake City	UT	84107	Goodman Transportation, Inc.
MC115166	3	06/08/82	Salt Lake City	UT	84109	Idaho-Pacific Freightlines, Inc.
MC145006	3	06/05/81	Salt Lake City	UT	84115	Western Battery Trucking
MC118116	3	06/11/82	Salt Lake City	UT	84115	Joe Doctorman & Son Inc.
MC145613	3	09/21/81	Salt Lake City	UT	84116	Tobar Enterprises, Inc.
MC118286	3	06/11/82	Salt Lake City	UT	84119	Everett Fredrickson
MC136961	3	04/06/81	Ogden	UT	84402	Lake Crystal Transportation Company

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MC146072	3	11/27/81	Odgen	UT	84403	Scottman Mobilie Service
MC138014	3	09/21/81	Price	UT	84501	D & D Trucking
MC094146	2	05/18/82	Alexandria	VA	22304	Quality Moving & Storage Co Inc
MC105606	3	05/24/82	Winchester	VA	22601	Roe, Joy W.
MC008736	3	04/26/82	Winchester	VA	22601	Patton's Movers, Inc.
MC147620	3	09/21/81	Stevens City	VA	22655	K M Trucking
WC000887	-	06/11/81	Richmond	VA	23219	The Chesapeake and Ohio Railway Company
MC114061	1	09/15/81	Richmond	VA	23224	Schneider's Transfer Inc.
MC143248	3	09/21/81	Richmond	VA	23225	Haywood Wrecker Service
MC140940	2	07/21/81	Chesapeake	VA	23320	E. E. Henry, Inc.
MC110476	3	05/26/82	Chesapeake	VA	23324	Schucker Motor Line
MC147403	3	06/05/81	Suffolk	VA	23434	B & H Trucking Company, Inc.
MC151937	-	09/21/81	Newport News	VA	23602	David Edmonds
MC151177	3	05/21/82	Portmouth	VA	23707	ATI, Inc.
MC124642	3	09/18/81	Waverly	VA	23890	S. A. Leicester
MC125525	3	04/03/81	Cascade	VA	24069	J. H. Guill Trucking Co.
MC148830	3	06/09/81	Newport	VA	24128	S & S Trucking Corp.
MC060466	3	05/14/82	Marshall	VA	24503	Wine, S. E.
MC148436	3	09/21/81	N. Tazewell	VA	24630	Johnson Mobile Home Movers
MC110356	3	05/26/82	South Ryegate	VT	05069	Calvin R. Frost
MC146835	3	06/05/81	Willmington	VT	05363	Elliott Robert G.
MC073656	3	05/17/82	Winooski	VT	05404	Gero Bros. Movers, Inc.
MC017136	3	04/29/82	Rutland	VT	05701	Todd Transportation Co.
MC014786	1	04/28/82	Bellevue	WA	98009	Smyth Van Line, Inc.
MC127116	3	11/03/80	Edmonds	WA	98024	Yakima Transfer & Storage Co
MC012236	7	04/27/82	Seattle	WA	98103	Bekins Moving & Storage Co.
MC139696	3	11/03/80	Seattle	WA	98108	Door To Door Transport, Inc.
MC123527	2	04/29/81	Seattle	WA	98109	Cordes Towing Service, Inc.
MC075346	3	05/17/82	Bainbridge Island	WA	98110	Bainbridge Auto Freight, Inc.
MC135291	2	01/19/81	Seattle	WA	98134	Ross & Hoglund, Inc.
MC116128	3	06/30/81	Seattle	WA	98166	Airline Special Handling
MC079496	3	05/17/82	Everett	WA	98201	White Star Van and Storage Inc.
MC069626	3	0[illegible]/14/82	Everson	WA	98247	Sumas-Everson Auto Freight Inc.
MC113596	3	05/28/82	Lopez	WA	98261	Lopez Auto Freight
MC075805	3	11/03/80	Bremmerton	WA	98310	Merchants Parcel Delivery, Inc.
MC134497	3	11/03/80	Sumner	WA	98311	Hi Quality Transportation, Inc.
MC150611	-	09/21/81	Sumner	WA	98390	Tom's Classic Transport, Inc.

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MC148395	3	06/05/81	Tacoma	WA	98402	Marine Transport Inc.
MC030176	3	05/07/82	Tacoma	WA	98409	Gilbo Moving & Storage Co.
MC027719	2	01/22/81	Tacoma	WA	98421	Hayes Truck Lines Inc
MC038435	3	11/03/80	Tacoma	WA	98421	Interurban Auto Freight Co., Inc.
MC135877	2	06/05/81	Takoma	WA	98421	Specialized Trucking Service
MC144501	3	12/18/80	Tacoma	WA	98446	Greg Lavelle Company
MC118506	2	06/11/82	Tacoma	WA	98499	Alaska Orient Van Service, Inc.
MC006156	3	04/26/82	Olympia	WA	98501	Eads Transfer Inc.
MC005136	3	04/26/82	Camas	WA	98607	Cooper Truck Lines
MC084716	3	05/17/82	Ephrata	WA	98823	Goldberg Brothers
MC143980	3	07/21/81	Republic	WA	99166	Gerald E. Saltsman
MC149023	3	12/21/81	Spokane	WA	99202	Blue Bird Van & Storage Co., Inc.
MC088706	3	05/17/82	Walla Walla	WA	99362	C. L. Ross, Inc.
MC129945	3	10/16/81	Sturtevant	WI	53177	Bouwma Trucking, H.
MC028551	2	01/13/81	Waukesha	WI	53186	General Cartage Co.
MC157018	3	06/04/82	Milwaukee	WI	53207	S. A. M. Transport Inc.
MC023036	3	05/07/82	Milwaukee	WI	53209	Schiffmann Moving & Cartage Co., Inc.,
MC063396	3	04/06/81	Milwaukee	WI	53213	Henry J. Ball & Sons Company
MC042536	3	05/13/82	Milwaukee	WI	53215	Cashen Moving & Storage Co., Inc.
MC146698	3	12/14/81	Milwaukee	WI	53221	David Moser Trucking Co., Inc.
MC146635	3	07/14/81	Milwaukee	WI	53222	Clover Leaf Lines, Inc.
MC041960	3	07/16/80	Milwaukee	WI	53225	Jung Transportation Co., Inc.
MC127096	3	07/14/81	Milwaukee	WI	53233	Hennes Trucking Co.
MC051021	3	01/09/81	Shullsburg	WI	53586	Plum City Trucking Company Inc
MC119126	3	06/22/82	Madison	WI	53704	Rite-way Auto Service and East Towne Arco
MC119126	3	06/22/82	Madison	WI	53704	Rite-Way Auto Service and East Towne Arco
MC124216	3	07/14/81	Madison	WI	53716	Lakeland Trans. Co.
MC010935	3	01/19/81	Dresser	WI	54009	Kessler Trucking, Paul
MC094156	3	05/20/82	Somerset	WI	54025	Belisle, Wallace
MC063236	3	05/14/82	Wilson	WI	54027	Tom Moldenhauer
MC128430	3	01/08/82	Brillion	WI	54110	Koch-Krueger Trucking Company, Inc.
MC137019	3	12/01/81	Manitowoc	WI	54220	Van De Hey Trucking
MC147283	3	06/05/81	Greenbay	WI	54304	Jack J. Blaser Trucking, Inc.
MC145410	3	09/21/81	Wausau	WI	54401	Imperial Growers, Inc.

DOCKET	ACCOUNT	DATE	CITY	STATE	ZIP	CARRIER
MC145327	3	09/21/81	Wausau	WI	54401	Imperial Growers, Inc.
MC153439	-	12/21/81	Neillsville	WI	54456	Ronald D. Aumann
MC147808	3	07/02/81	Schofield	WI	54476	Sun & Dog Trucking
MC135816	3	04/28/82	Wisconsin Rapids	WI	54494	Consolidated Papers, Inc.
MC143534	3	04/06/81	Augusta	WI	54722	Martinson Gerald
MC088286	3	05/17/82	Maiden Rock	WI	54750	Herbison Livestock Trkg
MC035856	3	05/10/82	Stockholm	WI	54769	Dennis Cordes
MC145184	3	06/05/81	Berkeley Springs	WV	25411	Hill Distribution
MC139623	3	06/11/81	Huntington	WV	25701	Adkins Transfer, Inc.
MC076768	3	05/17/82	Huntington	WV	25702	West Virginia Transfer, Inc.
MC151229	-	07/21/81	Chester	WV	26034	Chester Newell Transit
MC018416	3	04/29/82	Morgantown	WV	26505	Clawges Transfer Co
MC108716	3	05/26/82	Keyser	WV	26726	Trenter, Jr., Ernest
MC014680	3	01/15/81	Romney	WV	26757	Smith, Conard F.
MC099846	3	05/21/82	Rawlins	WY	82301	Hays Construction & Transportation Company
MC145977	3	06/05/81	Buffulo	WY	82834	Robert P. Morris
MC114466	3	05/28/82	Pinedale	WY	82941	Tomlin Transportation Company
MC029736	3	05/07/82	Pinedale	WY	82941	Johnson Trucking Company

Mr. **Anderson**. Please proceed.

TESTIMONY OF MARK ANDREWS, CHAIRMAN, LEGISLATIVE COMMITTEE, TRANSPORTATION LAWYERS ASSOCIATION

Mr. **Andrews**. Mr. Chairman, I will not read a word of it. I will briefly summarize what I would characterize as the three major points made in our prepared testimony.

I think the first major point which has been borne out by the majority of the testimony today is that, yes, there really is something terribly wrong at 12th and Constitution. As your committee has seen today, it is not just those elements that some self-righteous journalists sometimes refer to disparagingly as the truck lobby. It is owner-operators. It is small shippers who perhaps are not active in NAM or who are not in the Fortune 500.

All of them share this perception that there is something wrong there, and it is not even limited to the motor carrier industry, as you well know. Rail shippers are complaining about a similar lack of enforcement by the ICC, and just recently, I read that the chairman of the Water Transport Association has been making the same point with respect to those water carriers that are regulated by the Commission.

It is a growing, broadening perception, and if it ever was time to do something about it, we say now is the time.

What is wrong at 12th and Constitution? If I had to boil it down to one thing, I think I would suggest it is a failure of that Commission or those Commissioners to exercise the expert administrative discretion that was the hallmark of the Commission in times past.

They are fond of citing those portions of the legislative history of the 1980 act and those portions of the National Transportation Policy which speak in terms of increasing competition, loosening regulation, and the other things that they keep mentioning.

We never hear from them about the need also stated in the National Transportation Policy to preserve sound economic conditions, to preserve a transportation system.

I think it is clear that in any complex piece of legislation, those who enact it have many policy goals in mind, and any one of those policy goals, if carried to the extreme, will work against others, will lead to absurd results, and necessarily in a society such as ours, the drafters who put together such legislation rely on those who administer it to use judgment, to use expertise, to balance competing considerations.

This, we submit, is what the Commission has not been doing. The 1980 act, as we have said somewhere, gave the Commission an entire keyboard of means to be used in reasonable regulation of this industry but instead they sound only the one note.

All doubts are resolved in favor of stripping away regulation, letting the industry do its thing. It has almost gotten to be an automatic response.

As lawyers, we were taught that the way you construe legislation is to give meaning to all parts of it, and I would submit in so many ways, detailed in our statement, the Commission is giving meaning only to those parts of the legislation that spoke in terms of opening up the competition to some extent, is giving no meaning to those other provisions that continue a structure in place.

For example, no meaning is being given to the provisions relative to filing of tariffs by contract carriers, a recognized category of carriers in the act, when that requirement is simply exempted away from every contract carrier without consideration of individual circumstances.

The final major point in our statement, I think, is that surely now is not the time to make further experiments with sunsetting of transportation regulation, not when the results of sunsetting of aviation regulation, for example, are being debated with increasing urgency and not at a time when one of the catch words in the legal literature is exploration of alternative means of resolving disputes, to take them out of the court system.

If we did not have an ICC in the motor carrier area, I honestly do not think that there would be an end to litigation and dispute between shippers and carriers. The disputes would simply be shifted to a different forum, to the courts, which are already overcrowded with other things.

Here we have had an alternative means of resolving transportation disputes for lo these many years, and there are those who would propose to do away with it. We submit now is not the time to go in that direction.

There are two other points that I would like to make that are not in my statement. First of all, I have had an opportunity to examine both the list of 11 questions that this committee sent to the ICC about 10 days ago and the ICC's responses to those questions which were received yesterday.

I have not had a lot of time to examine those but I would like to make a few points about the ICC's responses. In general, I would commend the committee for making that effort to engage the Commission in a meaningful confrontation over what it is they are doing and why.

But I would urge the committee not to drop it with what was received from the Commission yesterday but to pursue it with them in advance of the November hearings where the Commissioners are to appear.

An example of why we think the committee must pursue this thing with the Commission would be their response to question 10 where the committee asked the Commission to explain why it has taken them so long to comply with the mandate of the fifth circuit concerning entry and restriction removal regulation in the well-known American Trucking Associations case.

The Commission's explanation provides a chronology of sorts I will grant you, but we come to the final sentence of that explanation and the Commission tells us they do not really think that the delay is all that important because only a relatively small number of cases by the Commission during the period after the ATA decision were appealed to the courts and of those few only a very small number were decided adversely, quote, usually on arcane issues, close quote.

Well, today I took a bit of time to just examine some cases I'm familiar with where the Commission has been reversed subsequent to the ATA decision, including a series of cases brought by Port

Norris Express where the issue was whether an applicant carrier should be forced to accept authority to transport bulk commodities where the carrier did not want that authority.

And we had the spectacle of this Commission so willing to leave everything else to management discretion, not letting management decide what authority it wanted. In several of the Port Norris cases the Commission was reversed.

Some other reversals that I am familiar with, and they are from a variety of circuit courts of appeal, include the 11th circuit ATA case involving certain aspects of the rate bureau requirements to comply with the 1980 act changes that Jack Corber spoke about.

There is the *Central Forwarding* case out of the fifth circuit involving owner-operator fuel reimbursement. There is the *Aero-Mayflower* case out of the seventh circuit involving an unannounced surprise change in the standards by which the Commission would decide whether a protestant carrier in an application case would even be heard.

There is an *Amador* case out of the ninth circuit involving standards for granting authority, whether statewide authority could be granted on the basis of a handful of shippers having traffic only to and from a handful of points.

There is a *Container Freight* case also from the ninth circuit where the Commission was reversed not only for having granted statewide authority based on the testimony of three shippers but also because of its handling of the fitness issue.

There is the *Coastal Tank* case from the sixth circuit, again, reversing the Commission for having found that an applicant with terminals in only two States was fit for nationwide authority.

The *Steere* cases in the fifth circuit involve the application of fitness requirements to restriction removal. There is the *Auto Express Mexicano* case from the ninth circuit involving reciprocity considerations as applied to Mexican carriers. Again, the Commission was reversed.

The issues involved in these cases, I submit, go to the fundamentals such as fitness, such as what Congress meant in changing the entry standards, and if the Commission seriously can characterize the issues involved in those cases where it was reversed as arcane, I think that in itself speaks volumes as to the attitude of this Commission toward the responsibilities it has sworn to discharge.

There is only one final point I might make about this. Questions were asked earlier in the day I believe by Member Shuster and Snyder regarding why it is that there seems to be a concentration of the industry in which perhaps the top 10 carriers, the biggest 10 carriers, seem to be doing very well.

And I would just make a few observations there to flesh out what certain other witnesses have said. No. 1, those carriers in the top 10 were not put there by the Motor Carrier Act. They have been there a long time.

They were big carriers under the old regime. They are still big carriers. We do not have any People's Expresses or New York Airs or Midway Airlines who have come into the LTL field as a result of the Motor Carrier Act of 1980. There is the one possible exception, Leaseway, but even they are not entirely new, and I am not sure how well they are doing.

But the other observation I would make is that there are some economies of scale in the handling of less than truckload freight which perhaps are not present in some other areas of trucking, and those carriers, I am sure they are efficient, but they also have much deeper pockets than some other smaller carriers who might also have been efficient if they had the chance.

Again, the conclusion I would draw is that there are certain large carriers out there who are going to do well in any environment but I think the question for this committee is what about the system, what about the other types of carriers who have always made a contribution, what is happening to them. And the Commission will not tell you because as someone pointed out, they do not even keep records about the small carriers any more.

There was one other point I was going to address. You raised it with Jack Corber about the budget of the Commission. I have followed that a bit. Earlier this year we had the spectacle of the ICC Chairman testifying in support of an appropriation level for the Commission which, by his own admission, would not be adequate for Commission discharge of its statutory functions unless those functions were reduced by further legislation.

Our association was active in pointing out the problems with that type of approach to budgeting, that it was not for the ICC to use the appropriations process as a backdoor means of deregulation but rather a matter for this Congress.

The trend toward year-after-year reductions in the ICC budget was arrested this year. I think I would agree with former Commissioner Corber that the staffing and budgeting is probably inadequate even now, and I would add that there is a tremendous morale problem among the staff of that Commission subjected as they are to a constant drumbeat from the top people in their own agency that what they are doing is worthless and useless.

I think that is another element of the very real problem we have at 12th and Constitution, and I hope that based on the record developed today in these hearings which I submit have been conducted in a very commendable way, I trust the committee will find ways of reminding this Commission of what it is they are to do.

Thank you.

Mr. ANDERSON. Thank you, Mr. Andrews.

Mr. Andrews, is it safe to assume that your organization's major objection is not directed at the Motor Carrier Act itself but rather at the implementation of this act by the Interstate Commerce Commission?

Mr. ANDREWS. I would agree with that, Mr. Chairman. I would simply qualify that. We may be facing a situation here where the Commission is so far out of control that it may not be possible to get it back into control given the present personnel there without some further legislative direction from this body.

But in concept at least, the 1980 act was not repugnant to our association, and if properly enforced, we would still support it.

Mr. ANDERSON. What specific legislative action would you like to see from the Congress to deal with some of the problems what you have outlined?

Mr. ANDREWS. I think the first and foremost thing that this Congress must do is pay greater attention to Commission appointments. I think new people is very much the key to making changes there.

I think there is a serious problem created by the legislative veto decision of the Supreme Court which certainly makes it much more difficult to legislatively overrule individual Commission decisions perhaps.

Mr. **Anderson**. Well, we do not have very much to do with the appointment of the Commission. What can we do? We do not even confirm the appointments. This side anyway.

Mr. **Andrews**. That is correct. I was speaking in terms of what Congress can do generally. Obviously, you are correct on that score.

I think that one tool is the appropriations process. I think that another tool is presented by the upcoming debate on the majority and minority reports of the Collective Ratemaking Study Commission. That is certainly an area where Congress can and I believe will act.

We have not drafted a legislative agenda because, as I said, we have felt up until very recently that the 1980 act, if properly administered, could do the job, but with the continuing nonfeasance by the people that are there now, the egg is getting scrambled even more, and I think many of us have only begun to address what would be needed to unscramble the egg legislatively.

Mr. **Anderson**. For the last several years we have constantly interceded to try to get more money for the Commission. We have written to the various budget groups on it, and just this last couple of weeks ago, we held hearings down in San Ysidro, and we had the ICC chairman down there and several staff, again pointing out that we need more staff down there to properly regulate the illegal trucks from Mexico that are coming in.

So we have been trying to encourage more finances for the Commission to do its enforcing job than we have had.

Mr. **Andrews**. Well, I think the committee is to be commended for that, and I think the way these hearings are being organized is another useful tool, and I would just repeat that I hope the committee and its staff will follow up on an excellent start that has been made in confronting the Commission with specific questions.

How do they derive the authority to do what they are doing? And based on the record made in these hearings, I hope that the strongest possible guidance through report language at the very least will be forthcoming as to those areas where the committee concludes there has been nonfeasance.

Mr. **Anderson**. Thank you very much, Mr. Andrews, for an excellent presentation.

I think that concludes our hearing tonight, and we meet tomorrow morning at 10 o'clock.

Mr. **Andrews**. Thank you, Mr. Chairman.

Mr. **Anderson**. We will recess at this time until 10 o'clock tomorrow morning in this same room.

We stand in recess.

[Whereupon, at 7:32 p.m., the subcommittee recessed to reconvene at 10 a.m., October 26, 1983.]

OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980; THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980; AND THE BUS REGULATORY REFORM ACT OF 1982

WEDNESDAY, OCTOBER 26, 1983

House of Representatives,
Subcommittee on Surface Transportation,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2167, Rayburn House Office Building, Hon. Fofo I. F. Sunia presiding.

Mr. Sunia. The subcommittee will come to order.

This morning's oversight hearings will be concerned with testimony on the implementation of the Bus Regulatory Reform Act of 1982, 1 year after its enactment.

This afternoon, we will hear testimony on the Household Goods Transportation Act of 1980, which is in its third year of implementation and oversight.

There are 24 witnesses scheduled to testify today, and in the interest of time, we hope the witnesses will be as brief as possible.

Before our distinguished colleague from Texas is given the floor, I would like to recognize Congresswoman Johnson. Do you have a statement to make at this time?

Ms. Johnson. Thank you very much, Mr. Chairman. I have no statement, but I am looking forward to the important work of overseeing this subject matter.

Thank you.

Mr. Sunia. Thank you.

We welcome as our first witness Representative Bill Patman of Texas.

Bill, please proceed as you wish.

TESTIMONY OF HON. BILL PATMAN, REPRESENTATIVE IN CONGRESS, STATE OF TEXAS

Mr. Patman. Thank you, Mr. Chairman.

I appreciate the opportunity to address the issue of bus deregulation before this subcommittee at this oversight hearing. It is an important issue to many of my constituents in the 14th District of Texas, which is a largely rural area, with limited access to public transportation, an area of 17,000 square miles.

I spoke about this just recently to my good friend, Mack Wallace, chairman of the Texas Railroad Commission, the State agency which regulates the Texas transportation industry. Chairman Wallace is unable to be here today, and Mr. Chairman, if it is permissible, I would like to incorporate in the record the comments of the Texas Railroad Commission on the Bus Regulatory Reform Act of 1982.

Mr. SUNIA. Without objection, so ordered.

[Statement referred to follows:]

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

COMMENTS
OF
THE RAILROAD COMMISSION OF TEXAS

on

THE BUS REGULATORY REFORM ACT OF 1982

Mack Wallace, Chairman
Buddy Temple, Commissioner
James E. (Jim) Nugent,
Commissioner

Railroad Commission of Texas
P. O. Box 12967
Capitol Station
Austin, Texas 78711

COMMENTS OF THE
RAILROAD COMMISSION OF TEXAS
ON
THE BUS REGULATORY REFORM ACT OF 1982

PREFACE

The Bus Regulatory Reform Act of 1982 (BRRA) has failed to produce any of the benefits which its proponents have projected. On the contrary, the BRRA has produced severe negative impacts on the states and their citizens.

Under the BRRA, service has been reduced, the financial position of bus companies has worsened, and the regulatory process has been made more expensive, more convoluted, and less meaningful. The ICC has played a shell game in which the rules are made up and changed along the way, concealed from the players, and applied in such a way as to make the state role in bus regulation a farce. For those states, such as the State of Texas, which take pride in responsive and responsible motor bus regulation, the ICC's actions are an insult to the regulatory process and the public.

If Congress is truly serious about making the future of public service by bus companies secure, it should work more closely with the states to hammer out a rational framework for regulation. Only by doing so will it be possible to achieve a proper balance between the need for service and the viability of the carriers.

The Railroad Commission of Texas (Texas Commission) has been regulating the transportation industry in the State of Texas for forty-two years. The Texas Commission regulates intrastate motor carriers, bus carriers, rail transportation relative to market entry, and in addition prescribes rates and charges for service. As such, the Texas Commission is familiar with federal statutes applicable to these forms of transportation; and, through inquiries and complaints from the public, is familiar with problems experienced by the public of the State of Texas relative to the effects of past and current regulatory practices.

The Texas Commission offers the following comments on the effects of the BRRA and recommendations for changes in the BRRA which the Texas Commission feels would be in the public interest.

COMMENTS

The Texas Commission disputes the premise of the BRRA, that a lessening of regulatory controls over bus carriers will enhance the viability of the motor bus industry, without significant negative impact on service to the public. The deregulation movement which led to the enactment of the BRRA began with the deregulation of the airline industry. It is in this industry that the deleterious effects of deregulation are now becoming apparent. The economic viability of the airline industry, as well as the service to the public, is in shambles.

The deleterious long-term effects of deregulation of bus companies will prove to be even greater. This is because regular route passenger service more closely resembles a standard public utility than any other mode of transportation. Inherent in regular route passenger service is the pervasiveness of low density routes and points where the traffic will not support more than one carrier. In addition, the bus industry is characterized by more concentration of market share than any other mode of transportation. Herein lies a potential abuse of market power similar to that once common in the passenger rail services.

Finally, and perhaps most importantly, there exists the potential for significant impact on service to the public. Bus operations are the last link between thousands of small towns and the rest of the regional and national economy, for both commercial and essential services such as medical care.

49 U.S.C. §10101 makes it the National Transportation Policy to maintain needed service to small communities, as well as to improve the efficiency and sustain the financial viability of bus

carriers. After considering the evidence submitted by the petitioner and respondents, the ICC is required to balance these competing considerations. The ICC has wholly failed to consider the need for service to small towns, thus discriminating against rural, agrarian, and ranching regions and states such as Texas.

The Texas Commission believes that the goal of balancing the public need for bus service against the financial needs of the bus industry can be achieved more effectively, within the basic parameters of the BRRA, by making certain changes in the Act, and the ICC's administration of the Act.

EFFECTS OF THE BUS ACT

Effect on the Service to the Public

Drastic reductions in service to small towns have occurred during the first year since the passage of the BRRA. Even more drastic future reductions are likely. The nation's largest bus carrier proposed to discontinue all service to over one thousand cities and towns in several states, among them Oregon, California, Iowa, and Texas. These proposed discontinuances tested the statute. As blanket affirmations of such proposals were forthcoming from the ICC, other carriers have proposed discontinuances in other areas.

During the year, the ICC has issued a number of decisions overturning state decisions denying applications to discontinue service.[1] The only times when state decisions were upheld involved two cases where the carrier decided that, due to the irrelevance of the state proceeding on the outcome of the case, it would not present a serious case to the state.[2] The ICC's decision in that case, and in subsequent cases, makes it clear that as long as the bus carriers make a minimal showing within a state proceeding and provide any type of supportive data, the bus carrier will prevail on appeal to the ICC. With this encouragement from the ICC, motor bus companies can be expected to discontinue service throughout Texas with impunity: without regard to whether such discontinuance is justified.

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[1] Cases in which the ICC overturned state decisions: Docket No. MC-1515 (Sub No. 332), Petition of Greyhound Lines, Inc. for Review of a Decision of the West Virginia Public Service Commission, (decided August 23, 1983; issued August 25, 1983), Docket No. MC-2890 (Sub No. 63), Petition of American Buslines, Inc. for Review of a Decision of the Nebraska Public Service Commission Pursuant to 49 U.S.C. §10935, (decided September 8, 1983; issued September 13, 1983), Docket No. MC-1515 (Sub No. 334), Petition of Greyhound Lines, Inc. for Review of a Decision o the State Corporation Board of the State of Kansas Pursuant to 49 U.S.C. §10935, (decided September 9, 1983; issued September 13, 1983), Docket No. MC-109780 (Sub No. 83), Petition of Trailways Lines, Inc., for Review of a Decision of the State Corporation Commission of the State of Kansas, (decided September 27, 1983; issued September 29, 1983), Docket No. MC-1515 (Sub No. 336), Petition of Greyhound Lines, Inc., for Review of a Decision of the Oklahoma Corporation Commission pursuant to 49 U.S.C. §10935, (decided September 15, 1983; issued September 19, 1983), Docket No. MC-1515, Petition of Greyhound Lines, Inc., for Review of a Decision of the Oregon Public Utility Commission Pursuant to 49 U.S.C., (decided September 12, 1983; issued September 15, 1983), Docket No. MC-C-10842, Petition of Carolina Coach Company for Review of a Decision of the North Carolina Utilities Commission Pursuant to 49 U.S. §11501, (decided April 14, 1983; served April 18, 1983), Docket No. MC-C-10844, Petition of Jefferson Lines, Inc. for Review of a Decision of the Missouri Public Service Commission Pursuant to 49 U.S.C. §11501, (decided April 25, 1983; served April 27, 1983), Docket No. MC-C-10852, Petition of Peoria-Rockford Bus Company for Review of a Decision of the Illinois Commerce Commission Pursuant to 49 U.S.C. §11501, (decided May 20, 1983; served May 24, 1983), Docket No. MC-C-10853, Petition of Greyhound Lines, Inc. for Review of a Decision of the Massachusetts Department of Public Utilities Pursuant to 49 U.S.C. §11501(e), (decided June 1, 1983; served June 3, 1983), Docket No. MC-C-10844, Petition of Greyhound Lines, Inc. for Review of a Decision of the Georgia Public Service Commission Pursuant to 49 U.S.C. §11501, (decided June 30, 1983; served July 5, 1983), Docket No. MC-C-10856, Petition of Jefferson Lines, Inc. for Review of a Decision of the Missouri Public Service Commission Pursuant to 49 U.S.C. §11501, (decided July 11, 1983; served July 18, 1983), Docket No. MC-C-10857, Petition of Trailways, Inc., American Bus Lines, Inc., and Midwest Bus Lines, Inc. for Review of a Decision of Missouri Public Service Commission Pursuant to 49 U.S.C. §11501, (decided July 19, 1983; served July 22, 1983)(14) Petition of Jefferson Lines, Inc. for Review of a Decision of the Missouri Public Service Commission Pursuant to 49 U.S.C. §11501(e), (decided July 29, 1983; served August 1, 1983), Docket No. MC-C-10855, Petition of Trailways, Inc., et al for a Review of Decision of the Arkansas Transportation Commission Pursuant to 49 U.S.C. §11501, (decided August 2, 1983; served August 5, 1983), Docket No. MC-C-10855, Petition of Bonanza Bus Lines, Inc. for Review of a Decision of the Massachusetts Department of Public Utilities Pursuant to 49 U.S.C. §11501, (decided August 11, 1983; served August 15, 1983).

In recent hearings on proposed bus service discontinuances, dozens of citizens from sities and towns of Texas testified as to their dependence on motor bus carriers for vital transportation service.[3] A number of individuals rely on motor bus carriers for transportation to receive chemotherapy or dialysis treatments available only in major metropolitan areas. The bus is, quite simply, the only method of transportation for a number of these individuals, and discontinuance of this service would be life-threatening. Many businesses depend on bus package services to deliver much needed freight quickly and reliably. Without this service, businesses in many small communities would be cut off from the mainstream of Texas commerce. Other citizens rely on the bus as their only mode of transportation when traveling to visit family or friends or for other purposes. A large number of elderly and poor persons have no other way to travel to distant points, and, without the bus, they would become even more isolated and immobile than they already are.

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[2] Service Discontinuance Case: Docket No. Mc-59238 (Sub No. 74), Petition of Virginia Stage Lines, Inc. for Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. §10935, (decided September 9, 1983; issued September 13, 1983); Rate Increase Case: Docket No. MC-C-10851, Petition of Greyhound Lines, Inc. for a Review of a Decision of the Missouri Public Service Commission Pursuant to 49 U.S.C. §11501, (decided May 20, 1983; issued May 26, 1983).

[3] Petition of Greyhound Lines, Inc. for Review of a Decision of the Railroad Commission of Texas Pursuant to 49 U.S.C. §10935 and 49 C.F.R §1169, ICC Docket No. MC-1515 (Sub No. 343), decision pending.

In some cases, the evidence demonstrates that the bus will continue to travel the same route through small communities, however, the bus will no longer stop. Many communities are losing even simple flag-stop service as a result of the closed door actions by the bus companies.

Although discontinuances of service are common, reductions in the number of schedules of service to small towns have been far more widespread. Often, these reductions in schedules amount to an effective discontinuance of service because the remaining schedule or schedules involve times which cannot possibly meet the public need.

Effects of the Act on the Financial Condition of the Bus Industry

Despite widespread reductions in service to supposedly "unprofitable" points, the financial condition of the bus industry has worsened.

The operating ratios of Greyhound Lines, Inc., Trailways, Inc., and other Texas carriers have increased drastically since 1981. The carriers are selling equipment and decreasing their service provision level. This has decreased revenue levels while the carriers still face overall increases in costs.

In proceedings before the various state agencies regarding schedule discontinuances and rate increases, the bus companies have evidenced a remarkable level of ignorance of their own operations. This has been demonstrated by their failure to develop, maintain and make available records concerning ridership data, complete route data, and specific, as well as relevant financial data. The absence of competent evidence makes it impossible for the public to rebut any statements or assertions made by the bus companies, especially in service discontinuance cases.

The ICC effectively encourages this ignorance by its liberal assessments of a bus company's case. In a recent decision where the ICC granted a bus company's application to discontinue service over the objections of the state, there was a question as to the accuracy of the methodology by which the bus company had calculated its financial data. The ICC candidly admitted that it was not sure of the exact amount by which the carrier's expenses exceeded its revenues, but opined that it was probably "a great deal".[4] This the ICC decided in a case rife with testimony of potential public deprivation. With such irresponsibility in the ICC's decisions, it is no wonder that the bus companies are irresponsible in their record keeping.

RECOMMENDED CHANGES IN THE BRRA

Charter Authority

New charter authority grants should be immediately curtailed and service under existing grants should be restricted to points where regular route passenger service is provided by the carrier. Revenues from charter operations make it possible for motor bus carriers to serve small towns along routes between larger cities. These revenues formerly comprised 10 to 20 percent of the total revenues for regular route passenger carriers in the State of Texas. Authority to perform charter service was formerly available only to regular route passenger carriers, and it was restricted to charter trips originating at points where the carrier provided regular route service. This practice proved to benefit the public in Texas for many years.

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[4] Docket No. MC-1515 (Sub No. 334), Petition of Greyhound Lines, Inc., for Review of a Decision of the State Corporation Commission of the State of Kansas Pursuant to 49 U.S.C. §10935, (decided September 9, 1983; issued September 13, 1983).

Under the BRRA, charter service is effectively deregulated by the practice of granting nationwide interstate charter authority on request. The massive influx of interstate charter operators has made enforcement of intrastate charter restrictions impossible. This has resulted in a reduction of service to regular route passengers by intrastate carriers in an attempt to compete with interstate charter operators. In addition, intrastate passenger carriers have experienced a drastic reduction of charter revenues.

The charter revenues of Texas regular route carriers are down 40 to 60 percent. This is catastrophic to many small carriers located in rural Texas areas. Because of this diversion of charter revenues by carriers which are providing little or no regular route passenger service, drastic reductions in the regular route passenger service are imminent.

ICC Standard of Review

The ICC should be made accountable for its decisions in review of state regulatory actions. The ICC has failed to enunciate clear guidelines for the states in service discontinuance cases, as well as in rate increase cases. ICC regulations fail to define the key concepts in the BRRA.

Specifically, the terms "variable costs", "reasonable alternative service", and "comparable interstate service" have not been defined. In addition, "differences in costs, conditions, or service" such as would rebut a presumption of unreasonable discrimination against interstate commerce have not been defined. The ICC has not indicated how it would determine whether a difference in operating conditions or cost of service is sufficient to justify a disparity in rates.

The the BRRA provides that a presumption of unreasonable discrimination is rebuttable by a showing of such differences as are sufficient to justify the disparity between intrastate and interstate rates. The states, in assessing the reasonableness of rates under state and federal law, must make a determination concerning differences prior to a review by the ICC. Currently, the states must make this determination based on the records before them and on their own interpretations of the statute.

Generally, the only guidance provided to the states is given in ICC review decisions issued after the state has already exercised its jurisdiction. In these decisions, the ICC does not give credence to a reasonable interpretation by the states, but substitutes its judgement for that of the state.

In judicial proceedings involving the ICC's review of state regulatory actions, the ICC should bear the burden, of showing three things: first, that the state had sufficient notice, through ICC rulemaking proceedings, of the standard by which state action would be reviewed; second, that the applicant bus company submitted substantial, admissible evidence in the state proceeding to support a grant of its application under the applicable standard in the state proceeding; third, that the ICC's decision is supported by substantial evidence, affirmatively demonstrating that a proposed service discontinuance is in the public interest, or that a proposed rate change is reasonable.

The ICC should limit the scope of its review in each case to the evidence presented in the state proceeding. The the BRRA clearly intended for the state authority and the affected points to meaningfully participate in the decision to remove service. Bus companies should not be allowed to effectively ignore the states by presenting inadmissible and insubstantial evidence to the state and reserving the substance of their justifications for presentation to the ICC. The states are entitled to consider all evidence in a carrier's possession at the time of the hearing before the state agency. Such information should not be seen for the first time in the carrier's rebuttal petition before the ICC. Otherwise, the clear Congressional intent for state participation will have been thwarted. More importantly, the people in the points to be affected are entitled to hear exactly why a particular carrier feels that service to the involved points constitutes a burden on its operations. In addition, the people affected by proposed increases in charges, are entitled to hear exactly why the carrier feels that existing charges for service constitute an unreasonable burden.

Requiring that the ICC be accountable through its rulemaking proceedings and judicial review would assist the states in fulfilling their roles under the BRRA by giving clearer guidance concerning the standards by which the state action will be reviewed. In addition, such accountability will assist the Congress in conducting its oversight of the ICC administration of the BRRA because it will reveal the standards applied by the ICC in review of state action.

Specific Corrective Modifications

A number of specific modifications in the statute would address particular problems which have come to light during the first year of the BRRA's administration.

First, reentry should be restricted. In instances where a carrier has discontinued service to a point and a new carrier has initiated service to that point, the former carrier should not be permitted to reestablish service, absent a showing of public need. This restriction is necessary in order to encourage the investment in feeder route service to replace the departing major carriers.

Second, the "Taxicab Rule" should be repealed. The theoretical availability of taxicab service to a town where the departing carrier provides service should not be considered in determining whether reasonable alternative service is available. Taxicabs are simply not a reasonable form of mass transportation in the vast majority of situations where a carrier is discontinuing service to small towns in rural areas.

Third, the provisions allowing consideration of whether service sought to be discontinued has been subsidized by local government bodies should be revised. 49 U.S. Code §10935(g)(2) requires that the ICC consider, where applicable, whether a carrier has been offered or is receiving an adequate operating subsidy for service sought to be discontinued.

Evidence that an adequate subsidy has been offered or received would clearly be relevant to a determination under §10935(e)(1), since continuation of service cannot be an unreasonable burden on interstate commerce where the cost of providing the service is borne, in sufficient part, by a person other than the bus company.

The statute does not, however, give rise to any inference or presumption under §10935(e)(1) from the fact that no subsidy has been offered or received. Where no subsidy has been offered or received, §10935(g)(2)(B) is simply not applicable and consideration of this fact is not required. The absence of such a subsidy or subsidy offer should not be considered an indication that local governmental bodies lack interest in continuation of service. The existing interpretation of this provision by the ICC has a discriminatory effect on poor states and poor regions of the nation.

Fourth, the "Prior Notice" amendment should be adopted. This would require more advance notice of proposed discontinuances. Such a requirement would allow planning and institution of alternative service where that is possible. Currently, small towns with limited resources are unable to sift through the limited data provided to them in order to oppose a discontinuance and in addition, they are not given sufficient time to insure alternatives for their citizens who are dependent on bus transportation for the provision of essential services.

CONCLUSION

It is possible to maintain needed service to our small communities while improving the financial viability of bus carriers.

It is not possible to do so through irresponsible, arbitrary, and uninformed regulation. Unfortunately, this has been the result under the BRRA. The bus companies respond with comparable action: arbitrary rate hikes and irresponsible discontinuances--and the public continues to suffer.

As the Texas Commission stated above, if Congress is truly serious about making the future of public service by bus companies secure, it should work more closely with the states to hammer out a rational framework for regulation. Only by so doing will it be possible to achieve a proper balance between the needs for service and the viability of the carriers.

Respectfully submitted,

THE RAILROAD COMMISSION OF TEXAS

Mack Wallace

Mack Wallace
Chairman

Jim Nugent

James E. (Jim) Nugent
Commissioner

Buddy Temple

Buddy Temple
Commissioner

HCN/g

Mr. PATMAN. Thank you, Mr. Chairman.

He and the Commission staff have put together an excellent set of arguments against the premises of the Bus Regulatory Reform Act of 1982, along with some suggested changes that might be made in the act. I commend these remarks to the members of this subcommittee, and I ask that the statement be widely distributed.

When the House passed the Bus Regulatory Reform Act, I was among those Members voting against it. I was concerned then about the adverse effects it was likely to have in sparsely populated areas, far away from major cities and heavily dependent upon existing services. I can take no satisfaction in observing that some of my worst fears are being realized, as the Railroad Commission has reported. But I want to take a few minutes to report to you on some specific problems to my constituents, problems that they are experiencing and problems that they are anticipating, now that the legislation is in effect.

A few months ago, the Railroad Commission held a series of hearings on proposed discontinuances of bus service. At four cities along the San Antonio-to-Houston route, some 150 to 175 of my constituents testified as to the vital importance of the bus service in their communities. The most obvious injury would be to travelers along this route between two of Texas' three largest cities. There are no train stops on the route. There are no major airports. And many of the residents of the area are elderly and unable to drive private automobiles. Shippers and receivers of cargoes carried by bus testified as to the range of supplies, from auto parts to whole blood for transfusions, that are picked up and delivered along the route by people in the medical profession, by small businesses, and even by banking and savings institutions which send out their computer work for processing.

Kidney patients along this route need the service to get to dialysis centers in San Antonio and Houston; cancer patients need it to travel for their treatments. And veterans use it to go to the nearest VA hospitals for outpatient care.

The bus is a major mode of transportation for vaccines, specimens, X-rays, and other vital medical material that must be delivered overnight.

Cities such as Gonzales, Tex., depend on bus delivery for emergency repair parts for city-maintained equipment.

Finally, representatives of chambers of commerce and of ministerial alliances in the area testified on behalf of the elderly, the poor, and other groups who would suffer if service were cut off.

In the face of such a strong showing of adverse effects of the discontinuance of bus company stops along the route—effects threatening to commerce, to the standard of living, and even to life itself, in some cases—the Railroad Commission made a clearly proper decision in denying the application. But the case is far from being closed. The decision has been appealed to the Interstate Commerce Commission in accordance with the act, and the vast majority of such decisions have been overruled by the ICC. As the Railroad Commission has concluded in its remarks to this subcommittee, which I have offered to you, "The ICC has wholly failed to consider the need for service to small towns, thus discriminating against rural, agrarian, and ranching regions and States such as Texas."

These remarks go on to propose several changes to make the ICC's decisions more reasonable. States should receive clearer guidelines in both service discontinuance cases and rate increases cases. The decisions of State agencies should be given more credence. The ICC should limit the scope of its review to the evidence in the State's proceeding, rather than allowing the carrier company to present new material in its rebuttal petition.

These points are well taken, as are the Railroad Commission's further suggestions for amendments to the act. In the Commission's words, "It is possible to maintain needed service to our small communities while improving the financial viability of bus carriers," but not through "irresponsible, arbitrary and uninformed regulation."

Thank you, Mr. Chairman, and Members. If you have further questions, I will attempt to answer them.

Mr. SUNIA. Thank you very much, Congressman Patman.

Congresswoman Johnson, do you have any questions of the witness?

Ms. JOHNSON. I was just wondering, Mr. Patman, if your regulatory body at the State level has drawn up any more details on what they mean by "clear guidelines," and if you could leave that with us?

Mr. PATMAN. Yes, Ms. Johnson, we have an extensive set of suggestions by the Texas Railroad Commission, a very distinguished regulatory body, which I have incorporated in my testimony, or rather, offered with it, for your consideration, and I think you will find them very helpful.

Ms. JOHNSON. I think the problem that you have laid out so clearly is certainly a very real one, and I appreciate your testimony.

Thank you.

Mr. PATMAN. Thank you. I appreciate your attention.

Mr. SUNIA. Congressman Bosco?

Mr. BOSCO. Congressman, I wonder if you could tell us about the communities in your district that have lost bus service—apparently main carriers now do not service areas that they once had. Have competitors come along? The whole theory of deregulation is that if this becomes a free market situation, that smaller more efficient vehicles will be used, and the public will be served, but simply in a different manner. Has that happened in your district?

Mr. PATMAN. To a very limited extent. Some attempts are being made by local entrepreneurs to set up alternate service, but as of this date, they have been unsuccessful in providing the service that is needed by the local communities.

Mr. BOSCO. Thank you.

Mr. SUNIA. Congressman Smith?

Mr. SMITH. Thank you, Mr. Chairman.

Congressman, I am happy to see your statement. I represent a part of the State of Oregon that is quite rural, and I have been fighting about bus service for 20 years in that State, and I have come under the same kinds of problems that you have identified here, with small rural communities, and what you do about the fact that for themselves, they cannot justify, likely, a bus, yet they demand service for integral parts of life, as you have identified.

And I am wondering, in Oregon, we have been able to resist bus lines dropping certain small communities by attaching the idea that they have to drop a whole line, which might compensate them for that run—in other words, the identification of a couple of large cities and making them take a few small ones on the way. Is that happening in Texas, or are bus lines attempting to drop longer lines, as well?

Mr. **Patman**. They are attempting to drop long lines in Texas, and our Railroad Commission is hampered in its review of their proposals. Credence is not given to their analyses, their decisions, their statements, and I feel certain that with greater cooperation from the ICC, we could achieve greater coordination by the State agencies and local agencies, in attacking these problems and making certain that the public is actually served, even with bus deregulation. It is going to be a difficult process.

Mr. **Smith**. So as I hear you, you are saying you are not exactly attempting now to change the law, but you really are asking for a better understanding and cooperation from the ICC in regard to the problems in Texas and other parts of the country.

Mr. **Patman**. Perhaps some of the changes can be effected by simply changing the regulations of the ICC, but to the extent that changes in the law are going to be required, we will have to offer those.

Mr. **Smith**. Well, I appreciate you coming with this information, because I have exactly the same problem, and I would be happy to try to help you.

Mr. **Patman**. Thank you very much, Mr. Smith.

Mr. **Sunia**. The ranking minority member of the committee is here, and I would like to ask Congressman Shuster if he has any questions.

Mr. **Shuster**. No, I do not. Thank you very much.

Mr. **Sunia**. That is it, then. Thank you very much Congressman. We appreciate you coming before us this morning.

We will now have the California Public Utilities Commission, Mr. Weisser, the director of the Transportation Division, as well as the Michigan Department of Transportation, and Mr. Rudnick.

Gentlemen, we welcome you this morning.

The full text of your prepared statements will appear in the record at this point.

[Statements referred to follow:]

STATEMENT OF VICTOR R. WEISSER, DIRECTOR OF THE TRANSPORTATION DIVISION OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I am Victor R. Weisser and I am here representing the Public Utilities Commission of the State of California (CPUC) of which I am the Director of the Transportation Division. Our address is 350 McAllister Street, State Building, San Francisco, California 94102. Accompanying me is Harvey Y. Morris, who is a Senior Counsel with the CPUC. I appreciate the opportunity to express the views of our Commission, which has regulated intrastate bus service in California since the early 1900's.

During the Congressional debates which led to the enactment of the Bus Regulatory Reform Act of 1982, many members of Congress expressed concern about the harsh effects that this Act could have upon small and rural communities. This concern was reflected in several aspects of the Act as ultimately adopted. Unfortunately, this concern has proven to be completely justified. The very real consequences of the Act are already being felt by the people who live in the hundreds of communities throughout our nation which have already been abandoned or dealt with severe cutbacks in service tantamount to abandonment. In addition, hundreds of other communities are being threatened with the discontinuance of bus service in the immediate future in cases pending before state regulatory agencies and the Interstate Commerce Commission (ICC).

Considering that airlines and railroads have long since terminated their service to many of these small and medium-sized communities, the bus had become the last means of public transportation between these towns and the outside world. From the correspondence and studies we have received, it is evident that the people who are most dependent upon intercity bus service to their communities are senior citizens, disabled persons, children and the poor who are unable to drive or cannot afford automobiles. In many rural communities, the bus provides virtual "lifeline" service for receiving medical treatment, filling prescriptions, traveling to jobs or schools, buying necessities, or visiting families and friends. Small businesses and hospitals in rural areas rely on the bus for express package service of parts and supplies they cannot stockpile.

Many people have written letters to our Commission complaining about the hardship they have encountered merely from new schedules which carriers have already imposed, much less the extreme hardship which they would face in the event of abandonment. It is common knowledge that rural areas do not have the medical facilities or specialists to care for all of the medical and health problems that afflict residents. Some of the more troubling correspondence has come from people who rely upon intercity bus service to travel to larger cities to receive treatment for cancer.

We recognize that Congress was sensitive to these problems and that the maintenance of service to small and rural communities was part of the national transportation policy as well as an issue to consider in service abandonment proceedings. However, the bus companies have been insensitive to the needs of these communities and the ICC does not appear to be too concerned about these problems either.

A good illustration of this insensitivity is the ICC's West Virginia decision, No. MC-1515 (Sub. No. 332), decided on August 23, 1983. In this decision, the ICC recognized that evidence was submitted that demonstrated that the discontinuance would endanger those communities and individuals who are most vulnerable. As the ICC stated: "Senator Byrd cites testimony by senior citizens who rely on petitioner's service for frequent trips to the doctor or to have prescriptions filled. Other persons without their own automobiles travel to and from work daily on petitioner's busses. Local government officials, businessmen, and college administrators pointed out the adverse impact which loss of all intercity bus service would have on areas which are already relatively isolated and economically depressed. With respect to package express service, other witnesses testified to the importance of Greyhound's service for prompt delivery of replacement parts to mines and of medical supplies and blood to area hospitals. The commanding officer of the Marine Corps in West Virginia stated that the use of bus service for recruitment purposes is crucial. Senator Byrd emphasizes that no other passenger bus service would remain at points on the routes where Greyhound seeks permission to discontinue its service...." *Id*. at p. 5.

Despite this evidence, the ICC granted the discontinuance authority because the ICC found that Greyhound lost money from this service. While the CPUC does not take issue with the result in that case, we were disturbed by the ICC's rationalization concerning the impact upon the communities. After recognizing this hardship and not disputing the evidence, the ICC declared, "It cannot be assumed, however, that these individuals will be unable to reach their destinations. Many testified to taxi service availability, albeit at an increased cost. Bus service, including Greyhound's, remains available on other routes that *may* be accessible to protestants. Other protestants acknowledged that it would be *possible* to obtain rides from neighbors or relatives for these relatively short distances." Id. at p. 13. [Emphasis added.] Such statements of "possibilities" will certainly not be of comfort for those who actually cannot reach their destinations.

We recognize there are some bus services which are so unprofitable that they cannot be preserved or replaced. For those who are consequently dislocated as a result of the Bus Regulatory Reform Act, all we can offer is our sympathy. However, there is a large number of communities, currently being threatened with service losses that should not experience this hardship, because there is very little expense or inconvenience for carriers to continue to provide such service.

In earlier debates, members of Congress referred to so-called "horror stories" of buses passing through towns and not being able to open their doors. The Bus Regulatory Reform Act of 1982 has ended these concerns with its entry provisions which carriers have utilized in obtaining authority from the ICC to serve heavily populated communities. But this Act has caused a new generation of "horror stories" of buses that had previously served communities and have obtained authority or are seeking authority to keep their doors closed while they pass right through the communities. It is unconscionable for these carriers to desert people in communities that have grown dependent upon the intercity bus service and have no alternative intercity public transportation, when the carriers still utilize the highways which pass through or are in close proximity to these communities.

We can understand and accept service losses when carriers are abandoning an interstate route and want to discontinue intrastate service because they would no longer be serving a general area. However, in many cases, carriers are still using the main highways and serving the general areas, but have abandoned or propose to abandon bordering communities. In these instances, it is hardly a significant or undue burden for the carrier to pull over to the side of the road or just go down an off-ramp and get right back onto the highway after picking up awaiting passengers. In sharp contrast is the great hardship and inconvenience to the people in these communities who would have to watch helplessly as the buses, which they had previously used to receive medical care or visit loved ones, now travel by their towns without stopping. We do not believe that Congress intended for this to occur, but it is occurring and Congress can and should take some corrective measures to prevent it from occurring in the future.

Carriers may point out that they will still provide service to other communities ten miles or so from the newly-abandoned towns, but this is of little consolation to the senior citizens, disabled persons and poor who are unable to travel to the nearby communities -- that is precisely why they use intercity bus service in the first place. It is important to recognize that since the carrier still utilizes the highway and serves some communities along the highway, this may actually discourage other carriers from providing replacement service to the abandoned communities.

Many had theorized that the entry provisions of the Bus Regulatory Reform Act would help fill any gaps in service caused by the new exit provisions. Empirically, however, this is not taking place. Ever since Greyhound first indicated that it wanted to discontinue service to ninety-eight (98) communities in California over nine (9) months ago, our staff has actively sought other carriers to serve these communities. As of this date, only ten (10) of ninety-eight (98) communities are specified in any of the new certificates issued by the ICC or CPUC since the enactment of the Bus Regulatory Reform Act of 1982. As one might expect, these ten (10) communities generally are more heavily populated than the other eighty-eight (88) communities for which no new carrier has sought authority to serve. The fact is that small or rural communities are not big money-makers. It is unrealistic to assume that relaxed entry provisions, even coupled with active promotional activities by state or local governments, will result in new bus service to much more than approximately ten (10) per cent of the lost service.

For these reasons, we believe that Congress should amend the Bus Regulatory Reform Act to clarify that states may require carriers to continue to provide service to the communities that have grown dependent on such service when the carriers will still use highways that pass through or in close proximity to the communities.

Shortly after the Bus Regulatory Reform Act of 1982 went into effect, bus companies, such as Greyhound Lines, Inc. (Greyhound), rushed to file discontinuance applications with the relevant state agencies throughout the United States. In our state, Greyhound filed one application to abandon ninety-eight (98) communities. In our attempt to process this massive application within 120 days, the CPUC immediately sought data concerning the variable costs, revenues received and traffic surveys for each of these communities. Greyhound not only failed to provide most of the requested data to the CPUC, but it also refused our request that it provide the data to the affected communities or provide them with a clear listing of the ninety-eight (98) points proposed for abandonment which were not evident in Greyhound's application.

Greyhound's case is currently pending in the ICC and we are not attempting to litigate it here. But there are general patterns that are emerging as to how carriers are now responding to the states which are trying to implement the new policies underlying the Bus Regulatory Reform Act of 1982. While state agencies currently act much more expeditiously in processing carriers' applications in order to comply with the 120 days time period, the carriers are often not prepared and do not have the variable costs, revenues and traffic data tabulated to make the state hearings meaningful. The carrier may eventually compile such information towards the end of the 120 days, but then there is little time left for discovery, hearings, briefs and a decision by the state agency. Moreover, as our agency and many state agencies have found, the carriers are now much less cooperative and often unwilling to comply with state procedural requirements, apparently assuming that after "stonewalling" for 120 days, they can usually get discontinuance authority from the ICC.

Carriers may claim that state procedural requirements are bothersome. In fact, however, some members of their staffs readily admit that their goal is to do as little as possible in these important discontinuance proceedings. States' procedural requirements are not merely designed to facilitate the processing of applications by state agencies. These requirements are also essential to enable local governments, businesses and passengers who are affected by the proposed discontinuance to have a meaningful opportunity to participate in the state hearings.

It is imperative that those affected by any proposed discontinuance of bus service be sufficiently informed in advance of state hearings so that they can decide whether to participate in the hearings; identify, develop, and offer subsidies to retain services; or seek alternative carriers to provide the service. Intercity bus service is vital to many communities and they must have an opportunity -- a meaningful opportunity -- to preserve the service or find alternatives.

Considering that the carriers must complete their planning to determine whether to abandon certain communities well in advance of actually filing applications with state agencies, it would not be burdensome for them to give advance notice to the state and local governments prior to filing applications with the state. We therefore believe that at the very minimum, Congress should adopt H.R. 4067, which would amend the Bus Regulatory Reform Act by requiring more timely and sufficient notice than under the current Act. While these additional procedures may moderately increase the lead time for carriers which desire discontinuance authority, it is clearly preferable to the present system in which many communities have already lost their only intercity bus service, because, if they received any notice of the carrier's application for discontinuance authority, they received it too late or they were not furnished with sufficient information to do anything about it. We believe that this amendment is completely consistent with the intent of the Bus Regulatory Reform Act of 1982.

We also believe that the data provided by the carrier should reflect the specific variable costs, revenues, and traffic surveys of each community proposed for abandonment. In this way, an individual community can be informed of the specific subsidy required to maintain service to it without having to subsidize service to other communities along the route. Moreover, this specific information could establish that bus service is profitable to certain communities and therefore abandonment may be unjustifiable. Currently, carriers often group communities together in the data they present so that it becomes impossible to know which communities may require subsidies and which ones do not since the revenues received from serving all of the communities may not exceed the variable costs. We want to emphasize that each of the affected communities is unique and presents different issues for or against discontinuance of service. Their people and businesses deserve individual treatment for each community in state and ICC proceedings.

Finally, we respectfully submit that states should be allowed a limited role in regulating bus companies' schedules under certain circumstances. Under the Bus Regulatory Reform Act of 1982, states were preempted from regulating intrastate schedules of interstate carriers and, subsequently, many carriers have changed their schedules with the result that travelers are required to stay extra nights in other cities if they need to travel there. Many of the bus riders are senior citizens, disabled persons or the poor; therefore, schedule changes can result in a de facto abandonment since they cannot often afford additional food and lodging expenses in view of the fixed incomes they must live on. Indeed, our Commission has been flooded with letters and telephone calls from people who have expressed the great difficulties they now face in trying to travel to other cities for jobs or medical care or to visit their families and friends. Moreover, schedule changes which result in bus service to cities at inconvenient times discourage ridership. Consequently revenues will decrease and the carrier may then seek actual abandonment.

We do not believe that states must control all of the schedules of interstate bus companies. In those instances when a bus company provides frequent service to and from a town each day, such regulation is not necessary. But for those towns which have minimal daily bus service, the state agencies with jurisdiction over intrastate service should be allowed to regulate the schedules of the carriers.

In conclusion, we want to emphasize that the CPUC recognizes the reasons for the initial passage of the Bus Regulatory Reform Act of 1982 and has attempted to restructure its approach to intercity bus service regulation. Not only have we accelerated processing of rate and discontinuance applications, but we have also actively promoted the development and expansion of bus service in California. We are not asking to undo the Act, but that Congress should consider amendments to refine the Act to better protect small communities. Too many of these communities have already lost or are threatened with the loss of intercity public transportation without a meaningful chance to participate in proceedings and explore alternatives to loss of service. These communities must receive more advanced notice of discontinuance proceedings and are entitled to receive specific, relevant data for these proceedings. If the carriers still intend to use the highways that pass through or along these communities, then these communities should not even be faced with the prospect of total discontinuance of service.

Those who predicted that the Bus Regulatory Reform Act of 1982 would not result in an unacceptable loss of service are being shown everyday that they were absolutely wrong. This lifeline service has already been lost by thousands, and thousands more, who still rely on the bus, will soon be deprived of its services unless Congress amends the Act to provide for greater protections for the people and businesses in small and rural communities.

STATEMENT BY J. J. RUDNICK, ADMINISTRATOR OF THE INTERCITY DIVISION, MICHIGAN DEPARTMENT OF TRANSPORTATION AND CHAIRMAN OF AASHTO'S TASK FORCE ON INTERCITY BUS

Mr. Chairman, my name is J. J. Rudnick, Administrator of the Intercity Division of the Michigan Department of Transportation and Chairman of an AASHTO Task Force on Intercity Bus. I appear here today to provide you with information regarding the impact of the Bus Regulatory Reform Act of 1982.

The state of Michigan welcomed deregulation of intercity buses, and has been working to monitor the results and mitigate the impacts. In order to properly evaluate developments, we believed it useful to work with the other states through the American Association of State Highway and Transportation Officials.

Founded in 1914, AASHTO represents the departments concerned with highways and transportation in the states, the District of Columbia, and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the member highway and transportation agencies.

Within AASHTO's Standing Committee on Public Transportation, we organized a Task Force on Intercity Bus, of which I am chairman. My comments today represent the views of both Michigan, and the work of that AASHTO Task Force.

AASHTO followed the events leading to the passage of the Act very closely and had recommended that a four-year transitional period be made an integral part of any federal effort to deregulate the industry. Upon passage of the Act, through our Task Force on Intercity Bus the Association initiated an effort to coordinate the collection of uniform information from the states in order that we might assess the impact of the legislation. We believe the Congress acted wisely in providing for annual oversight hearings through 1985, and hope that information from our monitoring efforts will be of use in these hearings.

We presented testimony on behalf of AASHTO in June before the Motor Carrier Ratemaking Study Commission, and have received additional information since then which we would like to report to you today.

We have coordinated our monitoring effort with the National Association of Regulatory Utility Commissioners. The information we are reporting to you today represents the results of two surveys we conducted this year.

Our first survey was conducted in June and we have received a few updates on the information since then. A total of 40 states have responded to this survey which sought to quantify some of the impacts of the Bus Act. The survey was limited to changes in regular route services. We anticipated there would be substantial changes in charter services, but have concentrated on regular route changes, since these will have the greatest impact on individual travel needs.

Turning first to the area of abandonment of service, we have identified 480 communities in 24 states which have lost intercity bus service. In Michigan, we thus far have 51 such communities. Another 249 communities in seven states have pending discontinuances; Michigan is not on this list. The vast majority of these communities are rural. We have also identified an additional 280 communities in 18 states which have lost 50 percent or more of their regular route service, including some for Michigan. These figures may substantially underestimate the number of communities which have lost service since in some cases communities have simply been deleted from timetables or have had service times deleted from timetables which results in de facto abandonment. State-by-state tables which accompany our testimony provide greater detail on these changes.

We are aware of 11 states which have used federal funds available from the Section 18 program of the Urban Mass Transportation Act to assist intercity bus operations and four states which have provided state financial assistance for intercity bus. Michigan has had a comprehensive intercity bus assistance program since 1976. All of these assistance programs were in effect prior to enactment of the Bus Regulatory Reform Act of 1982. While the Section 18 program permits funds to be used for intercity bus service, we believe there is very limited potential for the program to support intercity bus services. The program as now established is simply too small to meet the demands of all nonurbanized public transportation needs.

We also requested information on communities receiving new or replacement intercity bus service as a result of the relaxed entry standards provided in the Act. Approximately 100 communities have gained new services since November 19, 1982, as reported by ten states. Another 60 communities in nine states have had another carrier provide replacement service to areas which would otherwise have lost service. In Michigan, new service has been approved over three new routes.

A second survey was conducted in August and September to assess some of the actions being taken by states following the Bus Act. The findings of that survey describe the actions which have taken place in the states to respond to the impacts of the Bus Act including state legislative actions, public information programs, studies and data collection and financial assistance. Responses were received from 48 states and the District of Columbia. The full report is attached to our statement.

Mr. Chairman, I would also like to submit for the record a report on "Deregulation of the Transportation Industry" which has just been completed by a Task Force of our AASHTO Standing Committee on Planning. It reviews the impacts deregulation of each of the modes has had on the U.S. transportation system. While our AASHTO Policy Committee has not taken action on the recommendations included in the report, we believe the report will be of interest to members of this committee.

At a meeting of our Policy Committee conducted earlier this month, we unanimously adopted the following position relative to intercity bus:

> AASHTO recommends that federal financial assistance be provided to respond to the impacts of the Bus Regulatory Reform Act of 1982.
>
> Although existing programs such as the Section 18 program of the Urban Mass Transportation Act permit funding of intercity bus services, these programs were not specifically designed for intercity bus purposes. If an existing program, such as the Section 18 program, is to be used to respond to the impacts of the Bus Act, then funding should be over and above that currently being provided and program requirements inappropriate for intercity bus needs should be waived.
>
> Prime responsibility for administration of the program should rest with the states.

In conclusion, Michigan and AASHTO intend to continue to monitor the impacts of the Bus Act. We believe the full story may not be known for two to three years. However, we recommend that federal financial assistance be provided to allow time for decisions on whether some of the marginal services should be continued. This would be in line with treatment provided to the rail and aviation modes when they were deregulated.

We would be pleased to provide such further information as may be needed and respond to any questions.

Thank you.

AASHTO

NUMBER OF COMMUNITIES WHERE INTERCITY BUS SERVICE HAS BEEN REDUCED BY 50% OR MORE SINCE NOVEMBER 19, 1982

STATE	Population Group				TOTAL
	- 5,000	5-25,000	25-50,000	+ 50,000	
Alabama	13	8	1		22
Alaska					0
Arkansas	24	2		3	29
Connecticut				1	1
Delaware					0
Idaho					0
Illinois	5				5
Iowa	8	1			9
Kansas	1				1
Kentucky	18	15	1		34
Louisiana	36	7	1	3	47
Maine	2	4			6
Maryland					0
Massachusetts					0
Michigan					0
Minnesota					0
Mississippi					0
Missouri	18	6		1	25
Nebraska					0
Nevada		1			1
New Hampshire					0
New Jersey					0
New Mexico					0
New York					0
North Carolina	1	2			3
North Dakota					0
Ohio	6	3			9
Oregon	28	3	2		33
Pennsylvania					0
South Dakota					0
Tennessee	15	2	1		18
Texas					0
Utah					0
Vermont					0
Virginia	11	1			12
Washington	14	1			15
West Virginia	7	2		1	10
Wisconsin					0
Wyoming					0
TOTALS	207	58	6	9	280

AASHTO

NUMBER OF COMMUNITIES LOSING
ALL INTERCITY BUS SERVICE
SINCE NOVEMBER 19, 1982

STATE	Population Group - 5,000	 5-25,000	 25-50,000	 + 50,000	TOTAL
Alabama					0
Alaska					0
Arkansas	7				7
California*					
Connecticut	1	4	4	1	10
Delaware					0
Idaho	12				12
Illinois*	62	8	2		72 **
Iowa	59	3			62
Kansas	2				2
Kentucky	28				28
Louisiana					0
Maine	11	1			12
Maryland	2	1	1		4
Massachusetts					0
Michigan	30	10	6	4	50
Minnesota	35				35
Mississippi					0
Missouri	16	1			17
Nebraska					0
Nevada	3	1			4
New Hampshire					0
New Jersey					0
New Mexico					0
New York	2				2
North Carolina	21	3			24
North Dakota					0
Ohio	30	9	1		40
Oregon*	5	1			6
Pennsylvania*					
South Dakota	4				4
Tennessee	13				13
Texas*					
Utah	7	3			10
Vermont	1				1
Virginia	37	2			39
Washington					0
West Virginia	17	6	2		25
Wisconsin***		1			1
Wyoming					0
TOTALS	405	54	16	5	480

* See list of pending abandonments.
** 15 of these communities were deleted from schedules without notice.
*** 34 communities had service terminated on October 1, 1982.

AASHTO

NUMBER OF COMMUNITIES GAINING NEW REGULAR ROUTE SERVICE SINCE NOVEMBER 19, 1982

STATE	Population Group - 5,000	 5-25,000	 25-50,000	 + 50,000	TOTAL
Alabama					0
Alaska					0
Arkansas	33 *	4	2	1	40 *
Connecticut					0
Delaware					0
Idaho					0
Illinois	3	3	1		7
Iowa					0
Kansas					0
Kentucky	3	1			4
Louisiana					0
Maine					0
Maryland		1			1
Massachusetts					0
Michigan	10	3	1	4	18
Minnesota					0
Mississippi		3			3
Missouri					0
Nebraska					0
Nevada					0
New Hampshire					0
New Jersey					0
New Mexico					0
New York	2		1		3
North Carolina					0
North Dakota					0
Ohio		1	1	7	9
Oregon	5				5
Pennsylvania	Unknown				
South Dakota					0
Tennessee					0
Texas					0
Utah					0
Vermont					0
Virginia					0
Washington		1	3	1	5
West Virginia	1				1
Wisconsin**	11	8	4	4	27
Wyoming					0
Guam	1	1	___	___	2
TOTALS	69	27	14	18	128

*All service terminated June, 1983 on 26 of these routes.

**19 communities gained new service on October 1, 1982.

AASHTO

NUMBER OF COMMUNITIES RECEIVING
REPLACEMENT REGULAR ROUTE SERVICE
SINCE NOVEMBER 19, 1982

	Population Group				
STATE	- 5,000	5-25,000	25-50,000	+ 50,000	TOTAL
Alabama	6	1			7
Alaska					0
Arkansas					0
Connecticut					0
Delaware					0
Idaho	2				2
Illinois					0
Iowa	27	3	1	2	33
Kansas	4				4
Kentucky					0
Louisiana					0
Maine					0
Maryland		2			2
Massachusetts					0
Michigan		1	1	1	3
Minnesota					0
Mississippi					0
Missouri					0
Nebraska					0
Nevada					0
New Hampshire					0
New Jersey					0
New Mexico					0
New York	2				2
North Carolina					0
North Dakota					0
Ohio					0
Oregon	4	2			6
Pennsylvania					0
South Dakota				1	1
Tennessee					0
Texas					0
Utah					0
Vermont					0
Virginia					0
Washington					0
West Virginia					0
Wisconsin*					0
Wyoming					0
TOTALS	45	9	2	4	60

*18 communities received replacement services on October 1, 1982.

AASHTO

NUMBER OF COMMUNITIES WITH PENDING APPLICATIONS FOR TERMINATION OF SERVICE SINCE NOVEMBER 19, 1982

Alabama	21
California	90 +
Illinois	3
Oregon	32
Pennsylvania	22
Tennessee	23
Texas	58
	249

SUMMARY

of the

JOINT SURVEY ON CHANGES IN STATE INTERCITY BUS PROGRAMS AND POLICIES

CONDUCTED BY THE

AMERICAN ASSOCIATION OF STATE HIGHWAY AND
TRANSPORTATION OFFICIALS

and

NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS

October 1983

(Based on returns of 48 states and the District of Columbia.)

The American Association of State Highway and Transportation Officials and the National Association of Regulatory Utility Commissioners conducted a survey of the states in August 1983 to collect additional information regarding the impacts of the Bus Regulatory Reform Act of 1982.

The findings of the survey are as follows:

Organizational Changes -- Seven states have had changes in state regulatory responsibility following the implementation of the Bus Act, such as a change from one agency to another or a change to no state involvement.

Legislation -- Eight states have enacted legislation since bus deregulation and ten have legislation under consideration.

Public Information -- Twenty-six states provide information to the public or to bus riders affected by the Bus Act.

Monitoring Efforts -- Seven states are collecting data beyond that requested by AASHTO/NARUC in the survey conducted earlier this year;

Fourteen states have completed studies dealing with the intercity bus industry and/or the impact of bus deregulation and eleven states have studies underway or projected.

Pre-emption -- Sixteen states have had their regulatory decisions taken to the Interstate Commerce Commission on appeal under the provisions of the Bus Act.

State Assistance -- Bus services have been subsidized in ten states; seven states have indicated that they are prohibited from or restricted in contracting with private, for-profit carriers for intercity bus service.

STATE ORGANIZATIONAL RESPONSIBILITIES
BEFORE AND AFTER THE BUS REGULATORY REFORM ACT OF 1982

Indicated in each column is the organization in the state responsible for these activities before and after the passage of the Bus Act. R = Regulatory agency such as public utility commission or public service commission. T = Department of transportation or highways. O = Other state agency. N = No state involvement.

State	Regul. Rates	Regul. Entry & Exit	Regul. Schedules	Regul. Safety	Regul. Insurance	Provide Technical Assist.	Provide Financial Assist.	Taxation	Other
Alabama	R	R	R	R	R	N		O	
Alaska	N	N	N	N	R	N	N	N	
Arizona	N	N	N	T	T	N	N	T/O	
Arkansas									
California	R	R	R	O	R	R/T/O	T	R	
Colorado	R	R	R	R	R	R	N	O	R
Connecticut	T	T	T	T	O	T	T	O	
Delaware	T	T	T	T	T	T	N	T/O	
D. C.	N	N	N	T/O	T/O	T	N	T/O	
Florida				T	O				
Georgia	R	R	R	R	R	R	T		
Idaho	R	R	R	R	R	T	T	O	
Illinois	R	R	R	T	R	N	N	O	
Indiana (before)	R	R	R	R	R				
Indiana (after)	N	N	N	N	N				
Iowa	R/T	R/T	R/T	T	T	T	T	O	T
Kansas	R	R	R	R	R	N	N	O	
Kentucky	T	T	T	T	T				
Louisiana	R	R	N	O	R/O	T	T		
Maine (before)	T	T	T	O	T	T	T	O	
Maine (after)	N	O	N		O				
Maryland	R	R	R	R	T	N	T	R	
Massachusetts	R	R	R	R	R	T	T	O	R
Michigan (before)	R	R	R	N	R	N	T	R	
Michigan (after)	N	T		T	T	T	T	N	
Minnesota	R	R	R	T	T	R/T	T	O	
Mississippi	R	R	R	R	R				
Missouri (before)	R	R	R	R	R	R	T	O	
Missouri (after)			N						
Montana	R	R	R	R	R		O	O	
Nebraska	R	R	R	R	R	N	N	O	
Nevada	R	R	R	R/O	R/O	T	T	R/T/O	
New Hampshire	R	R	R	R	R	R			
New Jersey	T	T	T	T	T	T	T	O	
New Mexico	R	R	R	R	R	O	O	T	
New York	T	T	T	T	T	T	T	O	
No. Carolina (before)	R	R	R	R	R	R/T	T	O	
No. Carolina (after)				T	T				
North Dakota	R	R	R	O	R	R/T	T	O	
Ohio	R	R	R	R	R	N	T	R/O	R
Oklahoma	R	R	R	O	R	N	N	O	
Oregon	R	R	R	R	R	R	T	R	
Pennsylvania	R	R	R	R	R	N	T	R/T	
Rhode Island									
So. Carolina	R	R	R	R	R			O	
South Dakota (before)	R	R	R	R	R	T	T	O	
South Dakota (after)				O					
Tennessee	R	R	R	R	R	N	N	O	
Texas	R	R	R	R	R	O	N	O	
Utah	R	R	R	T	R	N	N	O	O
Vermont	T	T	T	T	T	T	T/O		
Virginia	R	R	R	O	R	R	O	R	
Washington	R	R	R	R	R	N	N	O	
West Virginia	R	R	R	R	R	R	O	O	
Wisconsin (before)	R	R	R	T	T	T	T	O	
Wisconsin (after)	N		N						
Wyoming	R/T	R/T	R/T	R/T/O	R/T	R/T	N	O	

STATE ACTIONS IN RESPONSE TO THE BUS REGULATORY REFORM ACT OF 1982

State	State Legislation?[1]	Proposed Legislation?[1]	Public Information?[2]	Data Collection?[3]	Studies Completed?[3]
Alabama	No	No	Yes	No	None
Alaska	No	No	None	No	None
Arizona	No	No	None	No	None
Arkansas					
California	Yes	Yes	Yes	Yes	Yes
Colorado	No	No	Yes	No	None
Connecticut	No	No	Yes	No	None
Delaware	No	Yes	None	No	None
D. C.	No	No	None	No	None
Florida	No	No	None	No	
Georgia	No	No	None	No	Yes
Idaho	No	No	None	No	None
Illinois	No	Yes	None	Yes	Yes
Indiana	Yes	No	None	No	Yes
Iowa	No	No	Yes	No	Yes
Kansas	No	No	None	No	None
Kentucky	No	No	Yes	No	None
Louisiana	No	No	Yes	No	None
Maine	Yes	Yes	None	No	None
Maryland	No	No	Yes	No	None
Massachusetts	No	Yes	Yes	No	Yes
Michigan	Yes	Yes	Yes	No	None
Minnesota	No	Yes	Yes	Yes	None
Mississippi	No	No	None	No	None
Missouri	No	No	Yes	Yes	None
Montana	No	No	None	No	None
Nebraska	No	No	None	No	None
Nevada	No	No	Yes	Yes	No
New Hampshire	No	No	None	No	None
New Jersey	No	Yes	None	No	None
New Mexico	No	No	None	No	Yes
New York	Yes	No	Yes	No	Yes
North Carolina	Yes	No	Yes	No	None
North Dakota	No	No	Yes	No	Yes
Ohio	No	No	None	No	None
Oklahoma	No	No	Yes	No	None
Oregon	No	No	Yes	No	Yes
Pennsylvania	No	Yes	None	No	None
Rhode Island					
South Carolina	No	No	Yes	No	None
South Dakota	No	No	Yes	No	Yes
Tennessee	No	No	Yes	No	Yes
Texas	Yes	No	Yes	No	None
Utah	No	No	Yes	No	None
Vermont	No	No	None	No	None
Virginia	Yes	No	Yes	Yes	None
Washington	No	Yes	Yes	No	Yes
West Virginia	No	No	None	No	None
Wisconsin	No	No	Yes	Yes	Yes
Wyoming	No	No	None	No	None

1. See pages 5-7 for descriptions.
2. See pages 8-10 for descriptions.
3. See pages 11-14 for descriptions.

STATE ACTIONS IN RESPONSE TO THE BUS REGULATORY REFORM ACT OF 1982

State	Studies Underway?[1]	ICC Appeals? [2]	Subsidized Services?[3]	Priv. Contract Restrictions?[3]
Alabama	No	None	None	No
Alaska	No	None	None	No
Arizona	No	None	None	No
Arkansas				
California	Yes	Yes	None	No
Colorado	No	None	None	No
Connecticut	No	None	None	No
Delaware	No	None	None	No
D. C.	No	None	None	No
Florida	No		None	No
Georgia	No	Yes	None	No
Idaho	No	None	Yes	No
Illinois	Yes	Yes	None	No
Indiana	No	None	None	Yes
Iowa	No	None	Yes	No
Kansas	Yes	Yes		No
Kentucky	No	None	None	No
Louisiana	No	Yes		No
Maine	No	None	Yes	No
Maryland	No	None	None	No
Massachusetts	Yes	Yes	Yes	No
Michigan	Yes	None	None	No
Minnesota	Yes	Yes	None	No
Mississippi	No	None	None	No
Missouri	No	Yes	None	Yes
Montana		None	Yes	Yes
Nebraska	No	Yes		No
Nevada	Yes	None	Yes	No
New Hampshire	No	None	None	No
New Jersey	No	None		No
New Mexico	No	None	None	No
New York	Yes	None	Yes	Yes
North Carolina	No	Yes	Yes	No
North Dakota	No	None	Yes	No
Ohio	No	None	None	No
Oklahoma	No	Yes		No
Oregon	Yes	Yes	None	No
Pennsylvania	Yes	Yes	None	No
Rhode Island				
South Carolina	No	None	None	
South Dakota	No	None	None	Yes
Tennessee	No	Yes	None	Yes
Texas	No	None	None	No
Utah	No	None	None	Yes
Vermont	No	None	None	No
Virginia	No	None	None	No
Washington	No	Yes	None	No
West Virginia	No	Yes	None	
Wisconsin	Yes	None	Yes	No
Wyoming	No	None	None	No

1. See pages 11-14 for descriptions.
2. See pages 15-16 for descriptions.
3. See pages 17-19 for descriptions.

LEGISLATION

QUESTION #1. Has your state enacted any intercity bus legislation since bus deregulation? If so, please cite and provide a brief summary.

California - Assembly Concurrent Resolution 18: This measure requested the California Public Utilities Commission, and memorialized the Federal Interstate Commerce Commission, to disapprove any application of Greyhound Bus Lines to discontinue or reduce bus service to small, rural, and isolated communities within California and utilize the full applicable review periods specified in the Federal Bus Regulatory Reform Act of 1982 to review these applications.

Indiana - Adds IC 8-2-32 to: (1) consolidate the law on the regulation of buses in a new chapter; and (2) exempt regular route service by intercity carriers from all regulation except that covering safety equipment and operation rules. Amends IC 8-2-7, the motor carrier law, to remove the regulation of intercity bus fares, routes and service from the public service commission. Repeals obsolete or redundant sections on charter buses, safety equipment and operation, and commuter vans. Effectve September 1, 1983.

Maine - Effective Jan. 1, 1984, the State of Maine will no longer regulate bus operations. Future regulation will be exercised by the State Police in safety, insurance and annual statewide permits to identify carriers.

Michigan - Filing Fee increased, safety inspection added, increased insurance requirement.

New York - New York State Transportation Law revised, effective January 1, 1984. The revised law gives the commissioner broad enforcement powers over illegal carriers. Re-defines common carrier to include commuter vans, ambulettes, and airport limos. Relieves carriers from obtaining local consents from municipalities and placing legal notices in newspapers announcing fare increase proposals. Grant of permanent authority confers automatic charter and package express rights on "bus line" carriers. The law also reduces DOT time frame for deciding suspended bus fare increases from 10 months to 6 months. Legislation was passed allowing the state to directly sponsor a carrier in the operating assistance program who operates through two or more counties.

North Carolina - H.B. 1231, 1983 session of the N.C. General Assembly, amended G.S. 136-44.20 to allow the state (public transportation division) to provide the local match for federal public transportation assistance programs for intercity (cross county lines) bus and rail.

Ohio - No. The State of Ohio passed a deregulation bill three months before the federal bill passed. It eased entrance and exit requirements, and created a "free zone" within which tariff rates can fluctuate without being subject to PUCO requirements. It can be found in Section 4921.101 of the Ohio Revised Code.

LEGISLATION (continued)

Texas - H.B. 593 amended Article 911a, Vernons Texas Civil Statutes to provide that taxicabs with a manufacturer's rated capacity of five passengers or less are exempt from Railroad Commission regulation unless operating to or from a joint municipal airport. This amendment was effective September 1, 1983.

Virginia - General Assembly passed legislation which exempted from regulation (economic) passenger carrying motor vehicles operated under exclusive contract with U.S. Government Chapter 112, 1983 Acts of the Assembly.

Wisconsin - No. Deregulation at state level became effective on October 1, 1983.

QUESTION #2: Are you aware of proposed legislation -- or of legislation under development --as a result of or following deregulation? If so, please provide a brief summary.

California - Bills AB 280 and AB 281 would designate a Basic State Intercity Bus Network and set up a mechanism to provide support for services to communities losing intercity bus transportation. AB 2104 would recodify California law relating to intercity bus transportation and bring state law into accord with new federal regulatory reform legislation. Intrastate regulation would be simplified, safety would be bolstered, and a universal bus registration system would be introduced.

Delaware - Department of Transportation has drafted bill but has not introduced to Legislature.

D.C. - No. As part of a general review of ways to improve the fiscal condition of the city, the Transportation and Environmental Affairs Committee of the District of Columbia Council routinely examines ways of regulating movements into, and particularly through, the District of Columbia by intercity buses. This activity, however, cannot be attributed to current deregulation efforts or legislation.

Illinois - State Legislation: Prior Notice Amendment. Bus companies must annually submit a list of routes under consideration for abandonment. At least 30 days thereafter, company may file "Notice of Intent" to abandon, accompanied by cost and revenue data for the route. Between 60 and 90 days thereafter, company may petition for discontinuance. State rules in 90 days. Decisions appealable to the Interstate Commerce Commission. This allows time to work with local governments to find alternative means of transportation or to encourage the maintenance of service by the incumbent. Also Zone of Rate Flexibility: +25%/-25%. Federal Legislation: Prior Notice Amendment to Interstate Commerce Act.

Maine - See 1. above.

LEGISLATION (continued)

Massachusetts - Pending Massachusetts EOTC-sponsored capital assistance program for interstate carriers. State will buy vehicles, and lease to carriers for seven years. Through lease payments and eventual sale of vehicle proceeds, carriers will fully finance program. State credit and "non-profit, no-tax" status will allow carriers to put new equipment in service at low cost.

Michigan - Surface Transportation Assistance Act of 1982 - Title Four. Title Four establishes a federal grant program for state enforcement of Federal Motor Carrier Safety Regulations or equivalent state motor carrier safety program approved by the Secretary of Transportation.

Minnesota - The Minnesota DOT is considering a legislative proposal for the 1984 Session to assist communities that have lost intercity bus service through deregulation through technical assistance and state transit assistance funds.

New Jersey - Broad discussions have taken place to formulate proposed changes. No specifics as yet.

Pennsylvania - Pennsylvania Senate Resolution No. 35 - passed April 19, 1983 - referred to Joint State Government Commission to report back in 180 days on a proposal to divide the Public Utility Commission's jurisdiction into two areas: 1) transportation and 2) all other functions and responsibilities.

Washington - The Commission is preparing proposed legislation to amend the Auto Transportation statute and Charter Party statute to provide more flexibility to authorize new carrier entry and service.

West Virginia - No. Administratively, however, PSC proposed rules would extend notice period for schedule changes from 20-30 days per Bus Act maximum.

PUBLIC INFORMATION

QUESTION: What types of information, if any, does the state provide to the public or to bus riders affected by the Bus Act? Please list any information or publications (e.g., maps, inventories of alternative service, notices, leaflets) and indicate their availability?

Alabama - Notice of schedule changes and route abandonments in stations and buses.

Arizona - None. Bus transportation in Arizona was totally deregulated July 1, 1982. Information for bus riders is available from the individual firms and the bus association.

California - The state works closely with public agencies and assists with their information and technical needs. Numerous press releases and direct informational mailings to legislative and congressional representatives, etc.

Colorado - A notice of all applications filed with the PUC is published every two weeks. It is not distributed to the general public, but is available to any interested party that requests his name on the mailing list.

Connecticut - We provide public notice of any proposed changes and order the company involved to post a notice on the vehicles and at ticket agents. Additional information is provided on demand.

Iowa - There are basically two divisions within the Iowa DOT which deal directly with intercity bus systems. The Transportation Regulation Authority (TRA) and the Public Transit Division (PTD). The TRA has held public meetings, and the PTD contacted mayors and chambers of commerce. The PTD has also provided marketing and planning assistance. PTD publishes a Transit Atlas which includes intercity bus service maps, depot locations, and telephone numbers for all of the state's transit services.

Kentucky - Notices of public hearings and subsequent public hearings of any route abandonments or other changes are made available through public notices in the classified sections of newspapers with a wide distribution in the affected area.

Louisiana - Public notice on cancellation of service.

Maryland - Interested parties are referred to the local ICC office which distributes information on the Bus Act and its effect on the public.

Massachusetts - No bus riders affected by Bus Act yet. However, public information on all modes of transportation, including intercity bus services, is available through State EOTC. New program now being developed to provide computerized public information at new South Station-Boston Transportation Center. "Spider" map of Boston-based commuter service available.

PUBLIC INFORMATION (continued)

Michigan - Notice to the public of route discontinuance is required under Section 27 of Public Act 432. News release to industry publications covering interstate movements in Michigan and relaxing of required filings.

Minnesota - The Minnesota DOT is able to provide a listing of alternative services, and maps, but has not received requests from the public to provide this information as a result of the implementation of the Bus Act to date.

Missouri - 1) Notice of rate increase requests are sent to all newspapers and county courts in counties in which the bus companies operate. 2) Requests to abandon are sent to designated public officials in all counties and communities in which the bus company operates.

Nevada - Nevada State Transportation Map, 1983. This lists carriers, their routes, and phone numbers. It includes air, rail, bus, taxi, waterborne, city transit, and elderly and handicapped transportation. Copies are limited and gratis. Also, we notice all filings affecting rates (increase or decrease), schedule changes (adds, deletes, changes, etc.) and requests for discontinuance or new authority.

New York - Bus riders have not been affected by the Bus Act to this date. The Department of Transportation does provide a NYS Public Transportation Map, which details all intercity bus transportation within the state, along with the phone contacts for further service information.

North Carolina - a) A state public transportation guide including a statewide map of intercity bus and rail service will be available October 15. It includes a caveat concerning the need for consumers to confirm trip plans due to possible change in service resulting from deregulation. b) Greyhound passengers on routes to be discontinued are given information on alternative rural public service during the last 30 days of operation.

North Dakota - The Highway Department publishes an annual inventory of public transportation services.

Ohio - The only interaction with the public by the PUCO is to handle complaints. The 1979 Official Transportation Map published by the Ohio Department had a map of intercity bus routes, and telephone numbers for bus terminals. This has not been updated, however.

Oklahoma - Carriers are required to post notice of changes at stops and in newspapers and to notify all mayors, city managers, city council members and the Chamber of Commerce in affected communities.

Oregon - News releases by the Public Utility Commissioner to the media in areas affected by the proposed changes.

South Carolina - Information provided upon request.

PUBLIC INFORMATION (continued)

South Dakota - We respond to public inquiries.

Tennessee - Carriers are required to post notice of changes at stops and in newspaper. State publishes notice of hearings in newspapers of general circulation in affected area.

Texas - A pilot program entitled Coordinator of Existing and Needed Transportation Services, created by the Governor of Texas through Executive Order, is an attempt to disseminate information about the availability of transportation services to the general public, especially in rural areas. The information is made available to the public largely through local newspapers and area television stations. The program is presently operating only in Parker, Palo Pinto and Sommerville counties and is administered by the Texas Department of Human Resources. The goal is to expand the program to provide information about transportation services through the media in rural areas statewide.

Utah - Intrastate tariffs and time schedules are maintained in the Public Service Commission's file for public inspection.

Virginia - The State Corporation Commission does not print or distribute any publications concerning the Bus Act. SCC does, however, answer any questions submitted in writing or orally concerning motor carrier deregulation.

Washington - Advise affected communities of filings under Sec. 16 (49 U.S.C. 10935) of the BRRA of 1982, as well as Commission orders (WUTC).

West Virginia - None at this point, other than public notice requirements of carriers proposing entry, exit, schedule changes or service increases or reductions.

Wisconsin - A public transportation map has been compiled by DOT in a previous year but is not updated on a scheduled basis.

MONITORING: THE IMPACTS OF DEREGULATION

QUESTION #1: In addition to responding to the AASHTO/NARUC survey, does this agency collect any additional data concerning the impacts of bus deregulation? If so, are copies of this information available?

Arizona - Related studies: Transit Regulation (Aug. 1980); Transit Economics (Oct. 1980).

California - Underway is a study to determine changes in bus service since the onset of regulatory reform. Through the use of Russell's Guide, carrier interviews by California Department of Transportation personnel, contacts with local government sources and other means, changes in schedules and routes of all intercity bus transportation from November 1982 to November 1983 will be documented and analyzed, and results presented in a study in March 1984. Bus classification counts are being conducted periodically at key locations to reveal changes in overall bus traffic volumes and service patterns.

Illinois - The Commerce Commission tracks the Federal Register and the ICC Register to keep current on which companies are applying for new authority.

Michigan - Not at present. In the future, our modal planning units as well as the Bureau of Urban and Public Transportation will monitor effects.

Minnesota - Yes, weekly status report on deregulation impacts on Minnesota.

Missouri - The Commission can compile information on the changes and abandonments made to bus schedules since the passage of the federal act.

Nevada - Information will be available as part of an Intercity Bus Plan.

Oklahoma - To the extent that we have cases pending with ICC on service abandonment.

Virginia - SCC has been monitoring abandonments by ICC carriers under the Bus Act. Results are not published by SCC.

West Virginia - No specific data collection, although much public impact evidence was adduced in two recent abandonment (exit) cases which, by the way, are currently being reviewed by ICC.

Wisconsin - A study of the effects of state deregulation of Wisconsin Motor Carriers (including intercity bus service) was submitted to the state legislature by the Office of the Commissioner of Transportation.

MONITORING: THE IMPACTS OF DEREGULATION (continued)

QUESTION #2: Please list the titles and availability of any state studies dealing with the intercity bus industry and/or the impact of bus deregulation.

California - California State Intercity Bus Plan (1982); 1983 Update to California State Intercity Bus Plan; Routes, Stations and Service Restrictions (1982); Charter Bus Services (1981) - out of print; Intercity Bus Traffic Counts in California (1983); A Basic Guide to Highway Motor Coaches (Rev. 1983); California State Transportation Map (1980). Petition by staff counsel Harvey Morris to ICC re Greyhound's proposed service abandonment.

Georgia - Georgia DOT Research Project 8001; Georgia Intercity Bus System Study - 1983.

Illinois - "Bus Abandonments: Illinois Perspectives and Solutions". Available upon request.

Indiana - Indiana Intercity Bus Study, June 1981. Available upon request.

Iowa - 1983 Iowa Intercity Bus Plan (currently being printed); Intercity Bus Route Evaluations for Statewide Planning - May, 1981; Intercity Passenger Carrier Improvement Study - August, 1977.

Massachusetts - "A Study to Develop Policy Recommendations Designed to Upgrade Intercity Bus Service in Massachusetts," April 1980, limited availability through EOTC.

New Mexico - Intercity Bus Transportation in New Mexico - July 1980. Copies available upon request, New Mexico State Highway Department.

New York - "Evaluation of Policy on the Grant of Regulatory Authority to Transport Chartered Parties."

North Carolina - North Carolina Intercity Bus Study, September 1978; North Carolina Intercity Bus Market Study, August 1982. Both available from the Public Transportation Division.

North Dakota - Annual inventory of public transportation services.

Oklahoma - The legal department of the Commission has cases pending before the ICC.

Oregon - Intercity Bus Transportation in Oregon, Oregon DOT, Feb. 1975; Oregon Intercity Passenger Study, Oregon DOT, Dec. 1976; The Transportation Disadvantaged in Oregon, Oregon DOT, April 1977; Intercity Bus and Special Event Travel in Oregon, Oregon DOT, July 1977.

South Dakota - Motor Coach Lines Operating in South Dakota, May, 1983.

MONITORING: THE IMPACTS OF DEREGULATION (continued)

Tennessee - Tennessee Intercity Bus Study, Vol. 1 & 2, prepared by J. R. Wilburn and Associates, Inc. for Tennessee DOT, November 1981. Limited availability - contact Mr. Jan Richey, 615-741-2781 at TNDOT.

Washington - Intercity Bus Study (Washington, Oregon and Idaho) available from WSDOT on request.

Wisconsin - Intercity Bus Transportation in Wisconsin: Vol. I - Service and Operating Characteristics, Nov. 1976; Vol. II - User Characteristics, April 1977; Vol. III - Federal and State Regulations, Plans and Programs, Jan. 1977; Vol. IV - Future Demand for Service, Sept. 1977; Vol. V - Bibliography, Sept. 1977; Vol. VI - Summary and Recommendations, Oct. 1977.

QUESTION #3: Are any state studies underway or projected? If so, please provide a brief description and the date results will be available.

California - Special Bus Traffic Classification Counts (1984); 1984 Update to California State Intercity Bus Plan (1984); Commuter Bus Services (1985); Airporter Bus Services (1985); Public Sector Intercity Bus Services (1985).

Connecticut - We anticipate a request to our Bureau of Planning to update a motor bus inventory performed three to four years ago.

Illinois - The Commerce Commission is planning a detailed study of the Illinois Bus System and its companies late this year.

Kansas - Kansas DOT is preparing a state transportation plan in which an intercity bus plan is expected to be a part. A scope of this element cannot be prepared until staff is available.

Massachusetts - Possible study of state regulatory practices/procedures for potential reorganization of functions/responsibilities.

Michigan - See No. 1

Minnesota - Potential for a study to begin within the next year.

Nevada - This department is embarking on an intercity bus study to analyze some of the very questions in detail that are being sought by this questionnaire. The study is scheduled for two-three years with a final report following. Progress reports are anticipated.

New York - Description of existing bus service and recommendations as to how state could maintain basic services. Estimated availability, Spring 1984.

Oregon - A study of Oregon Passenger Services as a part of the Transportation Study directed by the 1983 Oregon Legislature, to be completed by January 1985.

MONITORING: THE IMPACTS OF DEREGULATION (continued)

Pennsylvania - Pennsylvania DOT, under a publicly funded assistance grant, is conducting a technical survey of all available intercity bus operations provided since November 19, 1982, what services are subsidized as a result of deregulation and any communities that may be gaining new regular route service, etc. A summary of this survey is to be made available to the general public, to bus operators and other interested parties.

Wisconsin - A study of the intecity bus service in Wisconsin and what the state's role in the provision of each service should be is currently underway. It is expected to be completed around the end of this calendar year.

PRE-EMPTION

QUESTION: How many and what types of state regulatory decisions have been taken to the ICC on appeal under the provisions of the Bus Act of 1982? Please list and provide a brief description of the type of decision, e.g., abandonment, rates, etc.

California - PUC dismissed Greyhound application to discontinue services to 96 locations on procedural grounds due to its incompleteness. Greyhound has filed with ICC for authority to abandon the points in question. One rate case in which Greyhound asked for a 15% fare increase.

Georgia - ICC decision No. MC-1515, decided July 22, 1983 dismissed for lack of jurisdiction a Greyhound application to discontinue various routes. ICC decision No. MC-C-10855 decided June 30, 1983 granted Greyhound a 20 percent increase in intrastate passenger rates and an 11.14 percent increase in intrastate package express rates.

Illinois - Rate increase. Illinois granted request in part and denied in part. ICC allowed bus company's total request. Peoria-Rockford No. MC-C-10852.

Kansas - Abandonment of Service (Fort Scott-Wichita); Abandonment of Service (Wichita-Junction City); Abandonment of Service (Kansas City-Hutchinson); Abandonment of Service (Wichita-Liberal); Abandonment of Service (Salina-Dorrance).

Louisiana - Route Abandonment; Rates.

Massachusetts - Peter Pan Bus (rate case); Greyhound Bus (rate case); Bonanza Bus (rate case).

Minnesota - Three routes denied for abandonment by the Minnesota Public Utilities Commission were appealed to the ICC on August 4th. These routes are: Alexandria to Fergus Falls (via Elbow Lake), East Grand Forks to Noyes and Morris to Benson. A decision is expected in early November.

Missouri - ICC decision No. MC-C-10844 decided April 25, 1983 overturned a state rate decision involving Jefferson Lines, Inc. ICC decision No. MC-C-10851 decided May 20, 1983 dismissed for lack of jurisdiction a Greyhound application for intrastate passenger rate increases. ICC decision No. MC-C-10844 decided July 11, 1983 denied the state petition to reopen case No. MC-C-10844. ICC decision No. MC-C-10856 decided July 19, 1983 overturned a state decision involving Trailways, Inc., American Buslines, Inc., and Midwest Buslines, Inc. ICC decision No. MC-C-10857 decided July 29, 1983 overturned a state decision involving an intrastate rate increase requested by Jefferson Lines, Inc.

Nebraska - One involved abandonment of service. No decision by ICC.

North Carolina - ICC decision No. MC-C-10842, decided April 14, 1983, overturned a state rate decision and granted Carolina Coach Co. a 20 percent increase in intrastate passenger rates, a 19.4 percent increase in intrastate charter rates and a 33 percent increase in intrastate package express rates.

Oklahoma - Two cases: Greyhound and Trailways seeking abandonment. Commission failed to act within 120 days. Greyhound case appealed to ICC.

PRE-EMPTION (continued

Oregon - Greyhound Lines, Inc., filed appeals with the ICC in connection with two decisions of the Commissioner. The Commissioner denied in its entirety a Greyhound petition to abandon numerous routes in Oregon, most of which affect residents of coastal communities. Greyhound filed petitions to increase fares by 20 percent and express rates by approximately 30 percent. The express rate increase was approved by the Commissioner, but the fare increase was limited to a two percent increase.

Pennsylvania - Docket No. MC-1515-Sub 339; MC-1501 (Sub Nos. 92 and 121); MC-1515 (Sub No. 6); Exit Petition: Pennsylvania filed by Greyhound Lines, Inc. to discontinue 12 bus routes, principally in northeastern, northwestern and central Pennsylvania.

South Dakota - None of the South Dakota Public Utility Commission's decisions have been taken to the ICC yet. No company has requested a line abandonment yet. No new line Authority requests have been received. No controversial rate changes have been authorized.

Tennessee - 1) Trailways discontinuance; 2) Trailways rates; 3) Greyhound discontinuance.

Washington - Carrier has appealed Commission's order denying application under Sec. 17 (rates), Cause TC-1698 as well as Commission's order in Hearing No. D-2442 to discontinue bus service on four routes in Washington under 49 U.S.C. Sec. 10935 and 49 C.F.R. Sec. 1169.

West Virginia - Greyhound abandonment - partially denied (approx. 50% of routes requested). Virginia State Lines (Trailways) abandonment - total request denied.

STATE ASSISTANCE PROGRAMS

QUESTION #1: In Part III of the AASHTO survey, states were asked to indicate bus services subsidized in response to the effects of the Bus Act. If your state has provided (or has utilized federal funds to provide) such assistance, please describe the subsidized services, indicating carrier, points served, amount of funding, whether for capital or operating expenses, and the sources (state, local, carrier and federal) and respective amounts of each funds.

California - Although the State of California has provided assistance to private carriers, none has been in response to regulatory reform.

Colorado - No subsidy has been applied for.

Connecticut - No new subsidy because of Bus Act. The Department of Transportation does not have funding available to expand the existing level of public transportation services.

Idaho - Twin Falls, Idaho to Pocatello, Idaho - $16,000 Fed Section 18; Northwest Stages - Lewiston, Grageville, Orotino, Id. $41,000 Fed Section 18. This subsidization is not in response to the effects of the Bus Act of 1982.

Iowa - Iowa, by law, is restricted to providing financial assistance to the urban and rural public transit systems. However, these transit systems may, if desired, in turn subcontract for services with an intercity or privately owned transit system. The Iowa Northland Regional Transit Agency and Jefferson Lines developed a joint marketing program for commuter services in and around Waterloo, Iowa, using approximately $10,000 in State Transit Assistance Funds.

Maine - Maine has intercity service contracts for 1982-83 totaling $100,000 in State funds (no federal). These subsidies did not result from deregulation.

Massachusetts - 1) Proposed State Capital Assistance Program, statewide impact, $5 million in 100% State funds. 2) Through Regional Transit Authorities and State EOTC, UMTA Section 3 capital applications totaling approximately $3 million for Hyannis-Boston, Brockton-Boston, and Worcester-Boston service (80% Federal, 10% State, 10% local funding).

Michigan - None at present. For FY 1983-84, starting October 1, 1983, $1.5 million will be available to address the impacts of deregulation. Specific projects are not known at this time. Projects will be 100% state-funded.

Montana - Section 18 is available to intercity carriers to maintain essential services. To date no Section 18 has been used to subsidize intercity service.

STATE ASSISTANCE PROGRAMS (continued)

Nevada - In response to deregulation, Sierra Nevada Stage Lines in Western Nevada is now operating a route dropped by a major Nevada carrier--Las Vegas Tonopah Reno Stage Lines. The route is 60 miles long and connects Reno and Fallon. No state money is involved. The carrier and UMTA/FHWA Section 18 funds are involved for operating expenses; however, the funds for this segment are not easily ascertainable since the carrier annually applies for funds for a much longer route network and specific route segments are not identifiable.

New York - Service to 85 communities is now being subsidized (38 of these were proposed for discontinuance). The amount of State funding is $720,000. The funding is provided to meet operating expenses.

North Carolina - No bus services have been subsidized in response to the effects of the Act. However, Section 18 funding has been used for three years to provide operating assistance to Virginia Dare Transportation Co. for three round-trips per day between Manteo and Elizabeth City, N.C., via Nags Head. Section 18 capital is being used to construct an intermodal terminal in Wilson, N.C.

North Dakota - The N.D. Highway Department is providing UMTA Sec. 18 operating funds to two bus lines in North Dakota. This assistance however is not provided as a result of the Bus Act. The two bus line recipients are: 1) D & J Bus Line - Crosby to Minot, $15,000 per year operating assistance (50-50 match). 2) New Town Bus Line - New Town to Minot, $9,000 per year operating assistance (also 50-50 match).

South Dakota - No common carrier has been subsidized by the state to provide intercity bus service as a result of the 1982 Act. The regular Section 18 and Section 16(b)(2) programs have not been affected by the Bus Act.

Wisconsin - Service to 46 communities is now being subsidized.

QUESTION #2: Is your state prohibited from or restricted in contracting with private, for-profit carriers for intercity bus service? If so, please provide a brief explanation of the source of such restrictions.

Indiana - State assistance is limited to units of local government that act as applicants under the UMT Act of 1964, as amended. We require that decisions regarding the provision of intercity service be made through a local public forum.

Massachusetts - There is legislation which permits municipalities to create regional transit authorities. Several have been formed and provide intercity transportation.

Montana - The Section 18 state management plan restricts direct contracting with intercity but does allow for private-for-profit contracting for services with either a public agency or a private-non-profit organization.

STATE ASSISTANCE PROGRAMS (continued)

New York - Carrier must operate through two or more counties to be directly sponsored.

South Dakota - South Dakota has no statutory authority or appropriations authority to expend state general funds for that purpose.

Tennessee - Enabling legislation does not exist.

Utah - The State Legislature has adopted the "Utah Public Transit District Act." Among the powers authorized is the power of such districts to contract with private-for-profit carriers to provide service (Title II, Chapter 20, Utah Code Annotated, 1953).

Washington - State Purchasing Division is free to contract with regulated intercity (and charter) bus carriers at either common carrier or free and reduced rates.

Mr. **Sunia**. Please proceed.

TESTIMONY OF VICTOR R. WEISSER, DIRECTOR, TRANSPORTATION DIVISION, CALIFORNIA PUBLIC UTILITIES COMMISSION, ACCOMPANIED BY HARVEY Y. MORRIS, COUNSEL; AND JEROME J. RUDNICK, ADMINISTRATOR, INTERCITY DIVISION, MICHIGAN DEPARTMENT OF TRANSPORTATION, AND CHAIRMAN, AASHTO TASK FORCE ON INTERCITY BUS

Mr. **Weisser**. Thank you, Mr. Chairman.

I am Victor Weisser, the director of the California Public Utilities Commission's Transportation Division. Accompanying me to my left is Harvey Morris, senior counsel with the commission.

On behalf of the commission, I would like to express my appreciation for this opportunity to express our views on this vital issue. As you indicated, we have submitted formal testimony to the committee, and I would like to highlight parts of that testimony and then respond to any questions that you might have.

Basically, we believe that despite Congress well-intentioned goal to preserve, insofar as possible, intercity bus services to rural and small urban communities, interstate carriers have exploited the provisions of the Bus Regulatory Reform Act of 1982 with the result that these communities are losing bus service at an alarming rate.

It is bitter irony that when these areas were losing most of their airline and railroad services, they were placated with the argument that lifeline bus service would still be available. But the fact is that hundreds of small urban and rural communities, with no alternative public transportation, have already been abandoned, and hundreds more are threatened with abandonment in proceedings now active before States and the ICC.

The impact on the people and businesses of these small communities can be devastating, since the bus is the only means of transportation for so many of the passengers—senior citizens, disabled people, the young, the poor—who are unable to drive or cannot afford automobiles and are left stranded in their small towns.

Bus companies should not be treated just like any other business. They provide lifeline service by bringing these people to other cities to receive medical treatment, social services, and to go shopping or go to work, or just to visit family and friends. These people should not be cut off from such crucial parts of their lives arbitrarily.

Unfortunately, the safeguards Congress built into the Bus Regulatory Reform Act to protect these people, frankly, are not working. Although Congress recognized that State hearings could provide opportunities for local communities to oppose abandonment or to discover how much subsidy would be required to continue service, interstate carriers have reduced the State hearing process to a mere time delay by refusing to provide information concerning basic costs, revenues, or the number of passengers they are carrying—or, by not even providing any notice of the proposed abandonment to affected communities. Instead, they have stonewalled the States and local communities, eventually filing petitions with the ICC, where they have been awfully successful in obtaining authority to discontinue service.

Therefore, we believe that Congress should provide new safeguards to make the State proceedings meaningful to participants. Critical information, such as costs, revenues, and passengers carried, must be provided to interested parties in advance of the proceedings, so that they have an opportunity to determine if carriers are actually losing money as they claim to be and if they are losing money, to offer subsidies to preserve the service.

In addition, we believe that Congress should provide that when carriers are not really discontinuing interstate routes but are continuing to use the highways in the same areas where they are proposing to abandon communities which have grown to become dependent on such service, that they should not be allowed to abandon these communities which border these highways.

Finally, schedule changes can often cause as much hardship as abandonment, when towns receive minimal daily service, and carriers come at extremely inconvenient times. We have received innumerable calls and letters from riders complaining that now they must spend additional nights in other towns, incurring added expenses for food and lodging. For communities receiving minimal levels of service, the States should be allowed to regulate one daily schedule of the carriers.

In conclusion, we believe these suggestions will help insure that rural and small urban areas are not unfairly deprived of service, as Congress so clearly intended in the 1982 act.

Thank you for your attention, and if I can answer any questions, I would be pleased to try.

Mr. SUNIA. Thank you very much.

Let me ask Mr. Rudnick to proceed. We have your entire statement, which will be made a part of the record. Please proceed now, as you see fit.

Mr. RUDNICK. Thank you, Mr. Chairman.

My name is Jerome J. Rudnick, and I am administrator of the intercity division for the Michigan Department of Transportation, and I am chairman of the American Association of State Highway and Transportation Officials' Task Force on Intercity Bus.

The State of Michigan supported the deregulation of the intercity bus industry early on, and we have been working to monitor the results and mitigate its impacts. Within AASHTO's Standing Committee on Public Transportation, we organized the Task Force on Intercity Bus, of which I am chairman. My comments today represent the views of both Michigan and the work of this task force.

In order to properly evaluate the developments, we believed it would be useful to work with other States through this organization and also in cooperation with the National Association of Regulatory Utility Commissioners.

In the events leading to the passage of the act, AASHTO at a hearing preceding the act had recommended a 4-year transitional period be made an integral part of any Federal effort to deregulate the industry. Upon passage of the act without that recommendation, we felt that it would be important to give you an accurate assessment of what the impacts have been. We do believe that Congress has acted wisely in providing for these annual oversight hearings through 1985, and we hope that this information will be of assistance in these hearings.

The information we are reporting to you today represents the results of two surveys we conducted this year, and 40 States have responded to this survey.

Turning first to the area of abandonment of service, we have identified 480 communities in 24 States which have lost intercity bus services. In Michigan, we thus far have 50 such communities. Another 249 communities in 7 States have pending discontinuances. Michigan is not on that particular list. The vast majority of these communities are rural. State-by-State tables accompany our testimony, and they provide greater detail on these changes.

We are aware of 11 States which have used Federal funds available from the section 18 program of the Urban Mass Transportation Act to assist intercity bus operations, and 4 States which have provided State financial assistance for intercity bus. Michigan has had a comprehensive intercity bus assistance program since 1976. All of these assistance programs were in effect prior to enactment of the Bus Regulatory Reform Act of 1982. And while the section 18 program permits funds to be used for intercity bus services, we believe there is a very limited potential for the program to support needed intercity bus services. The program as now established is simply too small to meet the demands of all nonurbanized public transportation needs.

At a meeting of the AASHTO Policy Committee conducted earlier this month, we unanimously adopted the following position relative to intercity bus. AASHTO recommends that Federal financial assistance be provided to respond to the impacts of the Bus Regulatory Reform Act of 1982. Although existing programs such as the section 18 program of the Urban Mass Transportation Act permit funding of intercity bus services, these programs were not specifically designed for intercity bus purposes. If an existing program such as the section 18 program is to be used to respond to the impact of the Bus Act, then funding should be over and above that currently being provided, and program requirements inappropriate for intercity bus needs should be waived. Prime responsibility for administration of the program should rest with the States.

In conclusion, the State of Michigan and AASHTO intend to continue to monitor the impacts of the Bus Act. We believe the full story may not be known for 2 or 3 years. We recommend, however, that Federal financial assistance be provided to allow time for decisions on whether some of the marginal services should be continued. This would be in line with treatment provided to the rail and aviation modes when they were deregulated.

We would be pleased to provide any further information that may be needed, and I would respond to any questions.

Thank you very much.

Mr. SUNIA. Thank you very much, Mr. Rudnick.

Let me first ask Mr. Morris to identify himself for the record.

Mr. MORRIS. I am Harvey Morris, and I am senior counsel with the California Public Utilities Commission.

Mr. SUNIA. Thank you.

I have a question for Mr. Weisser. What action, if any, is being taken by the State of California to help small communities retain the essential bus services?

Mr. WEISSER. Immediately after the passage of the act, California's Rural Legislative Caucus met with staff members of the California Public Utilities Commission and the California Department of Transportation, and together, two legislative actions were developed: Assembly bills 280 and 281, which would provide for a State-level source of funding available to subsidize services threatened with abandonment. Those bills are still wending their way through our State legislative process.

Additionally, the California Public Utilities Commission, upon receipt of the initial application for abandonment from Greyhound Lines, contacted all other certified and permitted carriers in the State of California, to ask if there was any interest in assuming any or all parts of lines and communities proposed to be abandoned by Greyhound.

So what we have tried to do is address threatened abandonments two ways—first, by attracting an alternate private operator to come in and assume the responsibility for the service; second, by seeing if we could not get the State, through the legislative process, to place resources available for subsidizing the service.

Mr. SUNIA. Thank you.

Mr. Rudnick, AASHTO is recommending that Federal assistance be provided to respond to the impact of the Bus Regulatory Reform Act of 1982. How much money do you estimate would be necessary for that type of program?

Mr. RUDNICK. In the original calculations that were done by the AASHTO group 2 years ago, we felt that $30 million a year, with a 50/50 match from the States would be adequate.

Mr. SUNIA. Thank you.

I recognize the ranking minority member, Mr. Shuster.

Mr. SHUSTER. Thank you very much.

Gentlemen, if I understand your testimony, you are saying that service to small communities should be provided at some level and in some fashion. If this service is unprofitable, who would you propose subsidize it?

Mr. Weisser?

Mr. WEISSER. Well, it seems to me and to the commission, in our approach toward the State legislation, that the local communities are a significant beneficiary of the service, and what we are proposing is a local source of funds matched by a State source of funds.

We would like to see a partnership. There are State and interregional benefits through the continuing preservation of this service.

Mr. **Shuster**. So you are saying the subsidy should be paid for by the localities and the State governments.

Mr. **Weisser**. That is correct, though I completely endorse AASHTO's recommendation for continuation and augmentation of the section 18 funding program to assist the States.

Mr. **Shuster**. Do the other gentlemen have any comment about that?

Mr. **Rudnick**. I do, Mr. Shuster. The AASHTO Task Force believes that it should be a funding partnership, made up of the Federal Government and the State government. The abandonments which we are now experiencing were perpetuated by Federal action to deregulate the industry, not State action or local action. I am not suggesting that the regulatory requirements in States or localities were perfect, but they did manage to maintain services in some local communities, which are now losing them. Those losses are perpetuated by the Federal action. We are not either proposing that the Federal Government should foot the whole bill. Our recommendation is that it is a partnership between the States, localities, probably, and a Federal match.

Mr. **Shuster**. Mr. Morris, would you care to comment?

Mr. **Morris**. Well, the only thing I would suggest is that for anybody to offer subsidies, one must know how much costs, revenues, are involved at any of the points, and the existing carriers must be more forthcoming in producing that information so that wherever the subsidy source comes from, an accurate subsidy is offered rather than an inflated one, based on the carrier's figures.

Mr. **Shuster**. All right. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Sunia**. Congressman Bosco.

Mr. **Bosco**. Thank you, Mr. Chairman.

Mr. Weisser, I found one part of your testimony particularly disturbing, and I would like to be absolutely sure of what you are saying. As I understand it, you are saying that some of these bus companies when they appear before the State commission, which has original jurisdiction on this, that they withhold information or do not provide vital information, presumably expecting to get turned down by the State, and then they simply move on to the ICC, which has a record of supporting them in these abandonments. Is that what you are saying?

Mr. **Weisser**. That is accurate, Congressman Bosco. In California, we requested very, very basic information from Greyhound in our abandonment proceedings—information on the cost of the service, the revenues collected, the number of passengers received—and although we did receive much information, this basic information necessary to know if indeed the carrier was making money or losing money or, if losing money, how much subsidy would need to be offered, never was forthcoming. It is my impression that the carriers essentially are stonewalling the States and local governments, waiting until the 120-day period ticks away, and then going to very friendly ICC for abandonment.

Mr. **Bosco**. So in effect, there is never an accurate public record built, at least at the State level, on these abandonments?

Mr. **Weisser**. In the absence of this basic information, public hearings are essentially meaningless, because you are groping in the dark for basic information about the service proposed to be abandoned.

Mr. Bosco. Mr. Rudnick, has that been your experience?

Mr. **Rudnick**. Not exactly. This kind of information is not required by the act, so it would have to be voluntary. We have a program in Michigan that, in order to participate in any financial assistance which we have, which at this point is limited, we have a bid process which requires certain information to be filed with us. So we generally can get the information we need regarding those kinds of areas that we are referring to here, where there have been abandonments.

Now, I know that in other States, there are some requirements for abandonments in the State regulations which probably do require this kind of information. In our particular State, it does not.

Mr. Bosco. I could understand if the question of subsidy were before the State, and it would be able to literally demand any information it wanted. But I am talking about when, apparently under the law, in order to get an abandonment to begin with, one must start with the State, and I presume that is true in Michigan. And what you are saying is in Michigan, basic information is not even required by the Commission before ruling on an abandonment?

Mr. **Rudnick**. Well, the Michigan Department of Transportation is now the regulatory body for the State of Michigan for Intercity Bus. We tailored our regulatory bill very similar to that of the Federal act. And unless there is direct protest, that kind of information is not required.

Mr. Bosco. Mr. Weisser, I have cases in my district, and I think Mr. Smith may have the same thing happening, whereby the bus service goes down a major artery—we only have two major roads in the whole district—and there are a lot of little towns along that major road, and they had been used to getting service when the service was regulated, but now, the bus company will only start at one end, and they will go right past or right through a town and not even stop in it, and go on to another major town, further down the road. And it always has seemed unfair to me that here the bus goes right by, and there are senior citizens and people who need to get places, and the bus does not even stop. It does not appear to me that it would be all that much trouble to stop the bus.

Under the law as I understand it, that is permissible. My question is does that activity in any way prevent one of these other carriers that are supposed to appear out of the blue and service these communities—it has not happened in my district—but does that type of activity even prevent this from happening in some way?

Mr. **Weisser**. Well, the continued presence of one carrier along the route serving the termini at each end of the route and maybe one or two major intermediate stops certainly would undercut the ability of a new, alternative operator to come in and serve those smaller communities that were abandoned by the other carrier. So it does have the tendency to discourage alternative service from appearing.

We found in California that of the 98 communities threatened with abandonment since the act was passed a year ago, only 10 percent of those communities have been large enough to attract interest from some other carriers in newly issued ICC or California Public Utility Commission certificates for service.

So 90 percent of the communities losing service are going to continue to lose service if the current rate of new applicants continues.

Mr. Bosco. But some of these little towns along the road—in other words, a competitor, who would have to put up some capital to create a bus line to service those little towns, would be discouraged from doing that, because all of a sudden, Greyhound might decide to stop at Willets all of a sudden and put them out of business. So this is, I think, a serious problem, because we are discouraging the very type of competition that we wanted to encourage by deregulation.

That is the end of my questions, Mr. Chairman.

Mr. Sunia. Congressman Smith.

Mr. Smith. Thank you, Mr. Chairman.

Should there be subsidies reinstated, where would you believe—all of you—the criteria for abandonment or continuation decisions ought to lie? Should it rest with the States, or should it rest with ICC? That is a very leading question, Mr. Weisser. Go ahead.

Mr. Weisser. Well, naturally, I feel that the decision should rest at the lowest level of Government that can respond to the issue in question. I believe that that does mean the States in this issue, since bus service essentially is interregional in nature. I do not think the ICC is staffed, equipped, or motivated, frankly, to deal with that type of a program. So I would strongly recommend the States.

Mr. Smith. Well, then, let me take you one stop further and ask you what regulations that you think the ICC now has control over should be returned to the States, or are there any?

Mr. Weisser. Well, as I indicated in the testimony, I believe that the States should have a more meaningful role in the hearing processes concerning abandonments. I believe the States should be returned the authority to control schedules in those communities for those communities that receive minimal service. And I believe that either Congress or the ICC should specify the type of information that States and local communities should have access to to deal with abandonment proceedings.

I would like to mention, Congressman Smith, if I might, that we are not asking for outrageous types of information at the State level. In California, we specifically ask for the same type of information the ICC requires.

Mr. Smith. I would like to have those recommendations in writing to me, if you would not mind.

Mr. Weisser. Certainly.

Mr. Smith. Mr. Rudnick, would you like to comment?

Mr. Rudnick. Congressman, I would just like to comment that we have to be very careful that we recognize that we cannot put any company in a situation where they are so-called "forced" to operate something in a deregulated scenario. In my State, we have had 26 new applications in the past year. Of the 26, 24 are charter applications; 2 are regular route applications, only one of which serves a rural community, and it is a worker/commuter operation. The other application which we have received for regular route authority is over a major artery between the third-largest and the largest cities in my State. We know that Michigan is a highly rural community, with the exception of a core of urban areas in the southern part. We knew, going in, that rural communities were going to suffer, because the carriers that were providing that service were not making any money, and in fact, were losing money. The only thing that probably softened the blow of losing money was they might have had exclusive charter authorities at the termini, those sorts of economic regulations which were prevalent in the sixties which, if I may say so, deteriorated in the seventies. Unless we provide some kind of economic base for them to provide these kinds of rural services, I do not see how we can ask them to continue them.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. SUNIA. Congressman Wolf.

Mr. WOLF. No questions, Mr. Chairman.

Mr. SUNIA. Gentlemen, I want to thank you on behalf of the committee for your testimony this morning. Thank you very much.

The next witness will be the Honorable Paul Simon of Illinois, who will be accompanied by Mr. O'Connor, chairman of the Illinois Commerce Commission and the National Association of Regulatory Utility Commissioners.

Congressman, it is a pleasure to have you before the committee this morning. We do have your full statement, which will be incorporated into the record in its entirety. You are free to proceed as you wish.

Mr. SIMON. I thank you very much. It is good to be at a subcommittee hearing and to see you presiding here, and I hope the word gets back to your area of this globe that that is happening.

Mr. SUNIA. It will.

The full text of your prepared statements will appear in the record at this point.

[Statements referred to follow:]

STATEMENT OF REPRESENTATIVE PAUL SIMON

Mr. Chairman, I appreciate this opportunity to discuss the implementation of the bus dereglation program.

I support bus deregulation and believe the bill we passed last year was basically a good bill. I share the Committee's view that state and federal red tape had become unduly burdensome in many cases.

But 11 months of experience with the new law have shown where some tune-up adjustments could be made so that the law will more fully reflect Congress intent. I am here today with Chairman Philip O'Connor of the Illinois commerce Commission to discuss what deregulation has meant in our state and to present our ideas for some modest changes in the law which would enable state regulatory agencies to come full circle from their past roles—when too often they were inhibitors of new ideas and of improved management techniques in the industry—to new roles as facilitators of good bus service. Without changes like these, we believe scores of communities will needlessly get stuck in the no man's land between the regulation of old and the deregulation of new . . . and will be stuck there without public transportation of any kind.

According to a survey by the Illinois Commerce Commission, more abandonment requests have been filed in the 11 months since enactment of the Bus Act than in the entire decade of the 1970's. In Illinois, routes through 99 communities already have been discontinued. Multiple filings have also been logged in California, Pennsylvania, West Virginia and many other states.

Most of the lost routes are in rural areas where bus service is especially important because of the large proportion of older citizens there who depend on buses for access to health care and other services, and because of its relationship to commerce and economic development. An Illinois Commerce Commission study of three rural routes recently abandoned shows that the proportion of residents older than 55 exceeds the statewide average in our state by as much as 50 percent in those areas.

Furthermore, when any area—rural or urban—loses public transportation, it loses some of its ability to attract business investments. It also loses the important freight-carrying services which buses provide in many parts of the nation in commodities as diverse as newspapers and blood plasma and auto parts.

Before enactment, the Committee and the Congress were assured by many of the largest members in the bus industry that there would be no wholesale abandonment of routes under the freedoms granted in the Bus Act. To quote William L. McCracken, senior vice president and assistant to the chairman of the board of Greyhound Lines, from his testimony on June 3, 1981:

"The gloom and doom prophets who foresee wholesale service reductions as a consequence of regulatory reform fail to reflect on the real world and recent experience."

Mr. Chairman, in the light of the experiences of Illinois and other states over the past 11 months, those assurances now seem hollow, indeed. Bus deregulation has washed over much of rural Illinois and other areas of the nation like a dreaded tide. From its wake, many quarters are calling for repeal of the act. We at this table are not among them. We were not among those "gloom and doom prophets" of a year ago.

But we do come prepared today to suggest a few straightforward steps to improve the operation of the Bus Act by fostering cooperation between state agencies, federal regulators and bus companies in a departure from the purely adversarial nature of the present process.

The Prior Notice Amendment (PNA) and related additions to the Bus Act which we have proposed in H.R. 4067 would not alter the thrust of the Bus Act. It would provide state and local governments with the time, information and authority needed to work effectively with carriers, substitute carriers and others to reach solutions to abandonments.

In many abandonment cases, local entrepreneurs could be recruited to provide replacement bus service. In others, innovative routing or the use of smaller vehicles could be the answer. But, across the country, alternatives like these are going unexplored because of the rapid pace of these abandonments and the inadequacy of the tools available to the states and communities affected.

The PNA proposal would provide these needed tools. Modeled on the rules which today govern rail abandonments, it would: (1) Require advance listing of bus routes which may be discontinued (2) Give states a tool they can use to discourage de facto route abandonments sometimes attempted by carriers through manipulative scheduling (3) Provide the basis for greater cooperation between federal regulators and the states on bus transportation matters (4) Confirm Congress' intent that the Interstate Commerce Commission, the states and others seek innovative regulatory approaches to ensure the preservation of bus service to areas threatened with the total loss of public transportation.

Similar provisions were offered at the time the Bus Act was considered but were not included in the final legislation on the basis of industry claims that deregulation would have no adverse consequences for rural communities.

This plan has already won the endorsements of the National Governors Association, the National Conference of State Transportation Specialists, the executive committee of the National Association of Regulatory Utility Commissioners and a growing number of state commissions.

If bus deregulation is to work as Congress intended, state and local governments must be provided the tools to work toward informed and reasonable solutions to abandonment problems. I hope you agree that this legislation would advance that goal.

Thank you.

Attachment: Fact Sheet on the Prior Notice Amendment.

FACT SHEET: PRIOR NOTICE AMENDMENT (PNA) AND RELATED AMENDMENTS TO THE BUS REGULATORY REFORM ACT OF 1982

THE PROBLEM

The Bus Regulatory Reform Act that deregulated many aspects of the intercity bus system was signed into law on Sept. 20, 1982, and took effect at the end of last year. The changes were prompted by intensifying competition for bus carriers from other means of transportation, and also by carriers' complaints about state and federal regulations that in many cases made it still harder for buses to compete. For instance, regulation had often created wide disparities between interstate and intrastate fares.

The resulting bus deregulation program has made it much easier for carriers to enter and exit the routes they serve.

Despite carriers' earlier assurances to the contrary, many rural areas are now rapidly losing bus service as the route map is realigned. Deregulation, now 10 months old, has already led to more abandonment requests than in the entire decade of the 1970's. In Illinois, routes through 99 communities have already been discontinued. There are reports in the industry that successive waves of abandonment filings could follow this year's requests.

Some of the slack from these abandonments could be taken up through recruitment of smaller firms with lower overhead or through innovative routing or the use of smaller vehicles. But, across the U.S., alternatives like these will not be fully explored because of the rapid pace of these actions and the inadequacy of the tools available to the affected states and communities under these conditions.

PROPOSED SOLUTION

These needed tools would be provided under a plan developed at the initiative of Illinois Commerce Commission Chairman Philip O'Connor, through consultation with U.S. Rep. Paul Simon, and with the support of Sens. Percy and Dixon and others in the Illinois Congressional Delegation. Introduced in the Congress on Oct. 3, this Prior Notice Amendment (PNA) and related changes in the Bus Regulatory Reform Act would not alter the thrust of the bus deregulation program but would tune up the statute to better equip state and local governments for constructive responses to the threat of lost service. Simon, O'Connor and other PNA advocates agree that if deregulation is to work as Congress intended, state and local governments must be provided the time, the information and the authority to work toward informed and creative solutions to abandonment problems.

This legislation would (1) require advance listing of bus routes which may be discontinued; (2) give states the right to rule on schedule changes which sometimes are used as de facto abandonments (this authority was taken from the states in the bus deregulation bill); (3) require Interstate Commerce Commission consultation with the states before certificates for new service can be issued (many lucratives corridors are being oversubscribed, forcing some local companies out of business); (4) confirm Congress' intent that the Interstate Commerce Commission, the states and other bodies seek innovative regulatory approaches to help preserve bus service for areas threatened with loss of all public transportation.

HOW PNA WOULD WORK

The plan is modeled on the requirements which now govern rail abandonments. Here is how it would work:

(1) On March 1 of each year, a bus company would publish a list of any routes which are candidates of abandonment. [Today, no prior notice is required.] Updates can be filed at any time throughout the year.

(2) Thirty days later, the carrier may next elect to file a "Notice of Intent" to discontinue service and would provide the state with ridership and revenue data for the route. [Today, the state receives this information later in the abandonment proceedings, after the procedural "clock" has ticked away much of the data's usefulness.]

(3) Next, the company may file a petition to actually end its service on the route. The state must rule within 90 days on the petition, and appeals would be decided by the U.S. Interstate Commerce Commission, as they are now. [The state oversight role under present law is 30 days longer.]

Because ridership and revenue factors are sometimes manipulated as a prelude to bus abandonments, the bill would allow states to rule on scheduling changes when service falls below two round-trips per day. The legislation also calls upon the ICC to consult with the states affected when granting certificates for new bus service.

STATEMENT OF CHAIRMAN PHILLIP R. O'CONNOR, ILLINOIS COMMERCE COMMISSION

Mr. Chairman, and members of the committee, my name is Philip R. O'Connor and I am Chairman of the Illinois Commerce Commission. I appreciate the opportunity to appear at this hearing to discuss the effects of the Bus Regulatory Reform Act of 1982.

I am representing today both the Illinois Commerce Commission and the National Association of Regulatory Utility Commissioners (NARUC). NARUC is a quasi-governmental, non-profit organization of regulatory bodies of the fifty states, District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

There is no single state position on the Bus Regulatory Reform Act. States tend to view the success or failure of bus deregulation in light of their own particular circumstances and philosophies. Some states are bitterly opposed to the Bus Act and believe it renders meaningless their statutorily mandated responsibilities to protect the public interest. Other states can live with the Bus Act but believe the Interstate Commerce Commission, by reversing state decisions in the great majority of cases that come before it, has made a mockery of the appellate functions to review state decisions granted to the ICC under the provisions of the Bus Regulatory Reform Act. And some states have totally deregulated their bus industries and to them the Bus Act is almost irrelevant. In Illinois we believe that some fine-tuning of the Bus Act is essential to address the increasingly serious problem of service abandonments in low density, rural areas. HR 4067, which Representative Simon and Senator Percy introduced on October 3, and which we refer to as the "Prior Notice Amendment", provides the necessary tools to encourage service on routes which are under the threat of abandonment. We are gratified that the Prior Notice Amendment has received such strong support from NARUC's membership and the National Governors Association.

I am pleased that so many of our colleague states have chosen to appear today to present their views on this important subject. Rather than attempt to duplicate their testimonies, I would like to largely confine my remarks to the area of greatest concern over the long run, discontinuance of service to rural communities, and then explain how HR 4067 would address this concern.

Like many regulatory matters, there is an interdependency of issues associated with Bus regulatory reform, Entry, exit, rates and federal-state relations all affect one another to such an extent that it is difficult to revise one factor without profoundly influencing another. But perhaps we can begin with the question of federal-state relations. The Bus Act gives the ICC jurisdiction over bus company appeals of state decisions on rate and abandonment matters. The ICC has heard approximately 22 appeals of state decisions on bus matters since November 19, 1982 when the Bus Act went into effect. The ICC upheld the state in only 4 of these cases. With a track record like that there is little wonder that the ICC has precious little credibility with the states. And when the ICC majority voted to eliminate the budget of its Office of Special Counsel, precisely the arm of the ICC which Congress intended to help small communities present their cases on abandonment appeals, it reflected the very unfortunate bias which the ICC demonstrates against the states and local governments. It would be most unfortunate if some state commissions simply decided that it would be a waste of taxpayers' money defending their rate and abandonment decisions before the ICC on the grounds that the ICC will routinely rule against the state anyway. This is clearly not what Congress intended when it passed the Bus Act.

A second area of federal-state relations that I would like to touch on is state regulatory uniformity. Partially in response to Section 17 of the Bus Act, the NARUC Transportation Committee created a State/Industry Task Force to recommend ways to bring motor carrier regulation into uniformity. Model state bus legislation is on the Task Force's agenda and I would expect very positive results from that effort within the next year. The States are in accord on the need for uniformity and are now developing the appropriate legislative language.

The next issue that I would like to discuss with the Committee is bus rates and tariffs. This subject was hotly debated during the hearings on the Bus Act last year. In Illinois our expereince has been mixed. Between February and May the Illinios Commerce Commission granted passenger rate increase petitions of between 15 percent and 25 percent for several of the Trailways Companies and Greyhound. Also, we partially denied a 20 percent rate increase application for the Peorior-Rockford

Bus Company and were subsequently overruled by the ICC. The smaller companies have not asked for a rate increase because traffic levels are already depressed and the demand elasticity for their routes is such that they lose revenue when they increase rates. Hence, the market place is effectively regulating the rates of the small carriers.

Some of our colleague states may disagree with our assessment, but we believe regulation has been federalized for all intents and purposes. The Bus Act creates a rebuttable presumption that intrastate rates held below comparable interstate levels are a burden to interstate commerce. The ICC has ruled that the State must demonstrate unusual conditions which justify a lower intrastate rate, but the ICC has not specified what kinds of conditions warrant a lower intrastate rate, nor how the state might be able to measure and establish such a rate. To complicate things further, the ICC loses its authority to investigate or suspend an interstate rate in two years, effectively making any interstate rate reasonable unless a complaint can prove otherewise.

Under the circumstances it is arguable whether the states have a meaningful role in rate regulation. In Illinois we have adopted a new overall strategy to create a climate in which bus companies will want to provide service in our state. This strategy includes granting bus companies a zone of rate freedom of +25 percent/−25 percent. In our estimation this will free our staff of the need to review rate increase applications that eventually would be approved by the Interstate Commerce Commission anyway if we denied them for any reason. Other states may endorse different approaches, but as long as the ICC's currernt rate regulations prevail, state concentration on rates seems to us in Illinois to be an exercise in futility. And, in a more positive sense, ratemaking flexibility is an important consideration in our overall effort to attract new carriers to serve Illinois communities.

I would now like to turn to the subject of abandonments and what we consider to be a critically important piece of legislation to deal with the abandonment problem. In that regard I would like to thank Congressman Simon and his staff, and the other members of the Illinois delegation for their interest, assistance, and support for the Prior Notice Amendment.

Earlier this year the American Association of State Highway and Transportation Officials (AASHTO) and NARUC jointly sponsored a survey of states. The representative of AASHTO will give the survey results to the Committee, but we understand that the survey from 40 states show that approximatley 1,000 communities have lost all or most of their service. In addition, our staff feels the survey may understate the number of affected communities due to some technical difficulties with the survey format. In Illinois 94 communities have lost service totally since the Bus Act went into effect. In fact, the Illinois system has been contracting for several years, even before passage of the Bus Act. In December, 1981 477 Illinois points received bus service. Currently only about 330 communities are served and we now see large geographic areas of Illinois without any regular route bus service at all. I wish I could say that the bus network has stabilized and that no more abandonment will occur. Regrettable we believe more service will be discontinued over the next few years, and therefore we will need new tools to respond to the problem in an effective way. We believe HR 4067 would give us those tools.

Perhaps the most interesting thing about HR 4067 is the fact that it brings local communities into the negotiating early in the process, so that a constructive solution to a particular abandonment can be found. We are convinced that local communities can play a very constructive role. They need not always be adversaries of the bus companies that have served them over the years as the current abandonment process requires them to be. But a prerequisite is that we must have a clearinghouse approach to abandonments. The companies must publically identify the routes that they have under consideration for discontinuance so that the state, other companies, and local communities can respond in a timely manner.

Under current law a bus company notifies the State Regulatory Commission that it wishes to abandon a route. This usually catches the towns and cities on the route, as well as the state, by surprise. The State responds with a data request to the company asking for justification for the abandonment. Eventually this is produced and the State has only 120 days from date of filing to rule on the justification for the abandonment. If the State grants the request, the service is treminated very quickly. If the State denies, the company may appel to the ICC and the ICC will "assign great weight" to route profitability and approve the abandonment if the revenue to variable cost ratio is unfavorable. Congress intended that the ICC would assist local communities on these appeal cases but, as I mentioned previously, the Commission majority has urged the office of management and budget to eliminate funding for this function. In short, the current process is an adversarial procedure intended to arrive at a decision, not a solution to the problem. Also, it is wishful thinking to believe a new carrier will spontaneously enter the market to provide replacement service. A new carrier would need high visibility that public involvement can give, plus reasonable ridership and revenue data, before it would enter such a market. A significant weakness of the Bus Act is that it discounts the importance of information for a potential carrier evaluating a marginal route.

The Prior Notice Amendment would give a new carrier that information. Let me describe how it would work. First, each carrier would file with the state and ICC a list of routes and communities served that it had under consideration for abandonment. The State would notify these communities that a problem existed and that service could be jeopardized if ridership didn't improve. Often people in small towns are unaware of the service available to them because no advertising is ever done on these routes. No less than a month later, the bus line could file a "Notice of Intent" to abandon the route. This notice would be accompanied by passenger, revenue, and cost data with which the State and local communities could either use to recruit a new carrier or to calculate a subsidy offer if funding is available. The State would then have 60 days to respond. Finally, the company would file a standard abandonment application and the State would have 90 days to rule on the case. The current appeals process would remain in place except that the ICC would have to give serious consideration to the community's need for service rather than the company's revenue to variable cost ratio.

We recently had a case in Illinois where Prior Notice would have worked well. A company filed to abandon a route and the Illinois Commission granted the abandonment. But it wasn't until the company posted notices in its stations that a second carrier even found out about the pending discontinuance. By the time a petition to begin serving one of the abandoned communities was filed with us and the authority was granted, the first abandonment had already been carried out, leaving a seven week gap in service. The Prior Notice Amendment would have prevented this from occurring.

Besides creating a clearinghouse for route swaps and generally creating a more orderly abandonment process, HR 4067 would require the ICC to consult with the states before granting new entry authority. It would not give the states veto power over new entry, but it would give the states the opportunity to make the ICC aware of the consequences of a new entrant in a particular market.

A fallacy of the Bus Act is that small companies have the staff resources to monitor the ICC register to keep current on applications for authority, and that small companies have the financial resources to wage successful protests to protect their profitable routes. Many simply do not have these resources. The ICC is supposed to take into consideration the effect of competition on a carrier's ability to provide service over its entire system. As a practical matter, the ICC ignores this criterion. Because of a recent ICC decision granting entry authority over an Interstate Highway in Illinois, we are concerned that over 40 communities in the western part of the State will eventually lose their only bus service. The Illinois Commerce Commission believes competition is a laudable goal, but when a decision is made in Washington which drives a small bus company in Illinois into extreme financial distress, we believe Congress should take legislative action. HR 4067 would require that the ICC take the affected State's recommendations into consideration on entry matters to prevent ruinous situations such as the one I've just described.

HR 4067 would also reassert State jurisdiction over scheduling where the level of service offered is less than four trips per day. Although this provision has been misrepresented as an attempt to reregulate the industry, in fact it simply is intended to make sure that service is offered at a reasonable time so that the maximum ridership is generated. If the carrier decides to abandon the service the state will still have an accurate ridership picture for the route to present to other bus companies in an attempt to recruit new service.

Finally, the Prior Notice Amendment would change the National Transportation policy to assign greater focus to the need for transportation service in rural areas.

The Prior Notice Amendment would not reregulate the bus industry, nor does it call on Congress to generate subsidy money to keep routes in operation. If local Governments can generate subsidy funds, so much the better. But HR 4067 keeps the decision making and the responsiblity for local transportation at the local level. To use the current computer jargon, HR 4067 is "Taxpayer Friendly."

Mr. Chairman, I appreciate this opportunity to discuss the Bus Regulatory Reform Act and our solutions to the abandonment problem. At this point I will be happy to answer any questions the committee may have.

Thank You.

Attachment.

ATTACHMENT I.—RESPONSE TO THE GREYHOUND CORP.'S CRITIQUE OF H.R. 4067/S.1916

H.R. 4067, the Prior Notice Amendment (PNA), is intended to confer the benefits of bus deregulation on rural America as well as the bus industry. The bill would fine-tune the Bus Regulatory Reform Act to give states minimal tools necessary to preserve service to small communities, either by locating a subsidy to continue service by the incumbent carrier or by recruiting an entirely new carrier to serve the route. H.R. 4067 does not reregulate the bus industry. It does not reverse the course which Congress set when it passed the Bus Regulatory Reform Act. And H.R. 4067 most certainly does not "gut major provisions of the Bus Act." as Greyhound alleged in its testimony for the House Oversight Hearings on the Bus Regulatory Reform Act on October 26, 1983.

H.R. 4067 squarely addresses an increasingly serious problem: the elimination of public transportation to rural communities. The intercity bus network has been contracting for years, but that process has accelerated since passage of the Bus Act, leaving thousands of small towns without any transportation except the automobile. This problem is made worse by the fact that the populations of rural communities commonly have a much higher proportion of elderly than larger cities. Senior citizens rely on bus service more heavily than other segments of the population, hence the transportation problem for rural America will intensify over the next few years.

In introducing the Prior Notice Amendment Representative Simon, Senator Percy and the other members of the Illinois delegation had the foresight to anticipate this problem. They recognized that by making adjustments to the Bus Act the states would have the mechanism for preserving service without significantly altering the basic thrust of the Act.

However, rather than accepting the Prior Notice Amendment as a vehicle to preserve service, Greyhound has chosen to misrepresent the Amendment as a thinly veiled attempt to repeal the Bus Act. Greyhound's major assertions are briefly addressed here:

TOPIC: MARKET EXIT

Allegation 1. States would be required to give wide publicity to carrier filings of routes under consideration for abandonment.

Response. The PNA does not require the states to publicize these routes, but it would be in their interest to do so to recruit new carriers or to get local communities actively involved.

Allegation 2. The carrier would be required to provide ridership, cost and revenue data for each route under consideration for abandonment.

Response. Incorrect. A carrier may have many routes on its list of routes under consideration for abandonment, but it would provide data only for routes for which it has filed a "Notice of Intent" to abandon.

Allegation 3. The PNA is "burdensome" because it would require carriers to maintain data on a route-specific basis.

Response. A carrier can hardly propose to discontinue a route if it does not know the route's profit margin (or lack thereof). Also, carriers which do not know their specific costs will become more efficient and profitable by learning them. The PNA is not "burdensome" in this respect.

Allegation 4. Despite a substantial reduction in regular route bus service in the past 12–15 years, no state has ever followed a prior notice procedure because existing regulatory procedures were sufficient to protect the public.

Response (A). The Bus Act obviously changed the regulatory environment for the states, so new mechanisms must be found to protect the public.

(B). With Prior Notice there may not have been such a "substantial reduction" in regular route service over the past 12–15 years. Alternative service could have been found for many routes.

Allegation 5. Information produced through the PNA process might be used to justify additional public transit subsidies rather than to assist private carriers.

Response. This objection to PNA is not entirely clear, but if a carrier is going to abandon a route, should it matter what type of company provides replacement service?

Allegation 6. Very few states are interested in planning for bus service, so they should not be bothered with unsought data and carriers should not have to supply it.

Response. We have yet to encounter a state that does not *heartily* endorse the PNA. Bus planning will be a critical state responsibility in the future.

Allegation 7. The PNA would establish a totally unnecessary scheme of record keeping and relation.

Response. The PNA was carefully crafted to minimize regulation and unnecessary data collection.

Allegation 8. The Bus Act sufficiently protects the public interest as written.

Response. The objective of PNA is to preserve service to rural communities which will inevitably lose it under current provisions of the Bus Act. Finding alternative service is central to protecting the public interest.

Allegation 9. The "burdensome" record keeping requirement of PNA would not replace the more current information regulatory authorities would require on a case-by-case basis.

Response. The data requirements of PNA are not excessive. Only routes for which a "Notice of Intent" to abandon has been filed would have to have any data filed for them at all. The data requirement would discourage frivolous abandonment threats. Finally, the PNA requirements would make any subsequent data request easier to comply with since most of the data would already have been assembled.

Allegation 10. The PNA would not address a felt public need or state demand.

Response. The public need for replacement service to rural communities is increasing, not decreasing. S. 1916 would give the states the tools to recruit new carriers.

Allegation 11. PNA would unnecessarily concern bus riders and communities who find their route on the list of routes under consideration for abandonment.

Response. Ultimately local communities must produce sufficient ridership to justify service. If they are not producing it, they should be made aware of that fact. If PNA makes them "concerned," that is exactly what it is intended to do.

Allegation 12. To identify a route as being under consideration for abandonment might drive ridership away.

Response. Extremely unlikely. PNA will improve ridership, not drive it away. Too often small towns aren't even aware that they have service available. PNA will bring the availability of bus service to their attention and that will encourage new ridership.

Allegation 13. While prior notice might work well for railroads, the dissimilarities between bus and railroad negate the need for PNA for buses.

Response. We disagree. Prior notice is critical for finding replacement bus service, notwithstanding dissimilarities between bus and rail infrastructures. The issue is bus service abandonment and matters extraneous to that are not particularly relevant.

Allegation 14. Many state legislatures favor total deregulation.

Response. Most state legislatures want the tools necessary to preserve rural bus service.

Allegation 15. Carriers only abandon routes where ridership is low, so the PNA process is unnecessary.

Response. PNA would not prevent abandonments of routes where ridership is low. But it would give affected communities time to bolster ridership before losing service.

Allegation 16. Greyhound has only received one subsidy offer, proving that there is no state interest in preserving service.

Response. Greyhound has demanded a subsidy of "fully allocated costs plus 20 percent," which obviously discourages subsidy offers. Also, subsidies are not easily generated. Funds must be appropriated for this purpose and that takes time. Normally no program has been established for this purpose, so it is not unusual that few subsidy offers have been made to date.

Allegation 17. By shifting the weight of evidence toward preservation of service, S. 1916 would sanction state decisions requiring that routes be operated for one passenger a day and that losses be incurred indefinitely where there is no public demand.

Response. This assertion is totally wrong. S. 1916 would not prevent any abandonments, but it would reestablish a balance among the 4 public interest criteria found in the Bus Act so that the ICC would deal with abandonment cases in an evenhanded way, as Congress intended.

TOPIC: MARKET ENTRY

Allegation 18. H.R. 4067 would give the states virtual veto power over entry authority, and the fact that the wording of the amendment refers to state "recommendations" on entry suggests secret dealings which bus companies would not be able to respond to.

Response. The word "recommendation" was specifically chosen by the drafters of H.R. 4067 to exclude the possibility that states would have veto power over entry.

Since the ICC refuses to consider the effect of new entry on small carriers and local communities, the states should have the standing to notify the ICC if a potential entrant would cause small communities to lose service. H.R. 4067 does not force that ICC to abide by the state's recommendation, only to seriously consider it.

TOPIC: SCHEDULING

Allegation 19. Carriers, not regulators, know when buses should be scheduled. The "regulator knows best mentality" should be rejected.

Response. H.R. 4067 reasserts regulation over scheduling only at very low levels of service (3 or fewer trips per day). At higher levels there would be no regulation. When carriers offer service in only one direction so that a person can leave a town but not return; when service is offered at times when a bus rider must spend two overnights in a neighboring city if he is to use the bus at all; and when service if offered at very inconvenient times, then, indeed, the regulator may very well have better insight into a local market than company officials domiciled at a distant corporate headquarters.

Mr. SUNIA. Please proceed.

TESTIMONY OF HON. PAUL SIMON, REPRESENTATIVE IN CONGRESS, STATE OF ILLINOIS, ACCOMPANIED BY PHILIP R. O'CONNOR, CHAIRMAN, ILLINOIS COMMERCE COMMISSION, SPEAKING ALSO FOR THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, AND TOM MYERS, SUPERVISOR, TRANSPORTATION PLANNING, ILLINOIS COMMERCE COMMISSION

Mr. SIMON. Let me just summarize briefly my views. I am pleased to be here with the chairman of the Illinois Commerce Commission, who has done a superb job, I think, of balancing various interests and protecting the consumers of the State of Illinois, and I am pleased to have him here with me.

Like many others, I voted for bus deregulation, and the intent was to get rid of a lot of redtape, and I think that was a good intent. Now, we have to take a second look and see where we are. The reality is that in the State of Illinois, we have had more abandonments in the 11 months since the enactment of deregulations than we had in the whole decade of the seventies. Ninety-nine communities that had bus service now no longer have it in the State of Illinois. Those who are particularly hurt in Illinois—and my guess is this will be true in your survey of any other State—are senior citizens. A disproportionate number of those who use the buses are senior citizens. And these tend to be rural areas that lose the service. These are older citizens who have to go to St. Louis, or Memphis, or someplace else to go to the doctor, and that is now being cut off.

Before we enacted bus deregulation, we were sure—and I can remember the discussion on the floor—we were sure that there was not going to be abandonments on this scale. As a matter of fact, William L. McCracken, senior vice president and assistant to the chairman of the board of Greyhound, on June 3, 1981, testified before this committee: "The gloom and doom prophets who foresee wholesale service reductions as a consequence of regulatory reform fail to reflect on the real world and recent experience." We believed him, and we voted for bus deregulation. Now, we are asking that we provide the same kind of protection for consumers that we provide in rail abandonments—that there be prior notice—and that is what we provide in H.R. 4067, which I hope this subcommittee will take a good look at. It leaves us free of a lot of the redtape we had before, but gives the States a chance, and local communities a chance, to move in and provide alternative service.

Let me give you a practical example of how this works in the rail field. In part of my district, Conrail announced that a certain portion of its railroad service just was not practical, was not economic, and so they gave us a notice they were going to abandon it. That gave us a chance to meet with other railroads. We finally got the Southern Railroad interested in taking over. They have taken it over. It has kept some industries alive. It has been a great thing for our area. We have no such protection now. Bus lines just almost arbitrarily decide to abandon, and it provides real problems.

So I would urge this subcommittee to provide a little greater protection. We do not want to impose on the bus companies unfairly. We want them to be profitable. But we want to have some protection for the consumers in the State of Illinois and in the other States, which frankly is not there right now.

I would be pleased to answer any questions you may have.

Mr. SUNIA. Thank you very much, Congressman.

Mr. Simon, would you like to introduce your friends for the record?

Mr. SIMON. Yes. Let me introduce the chairman of the Illinois Commerce Commission, Mr. Phil O'Connor, who I mentioned earlier has been doing an exceptionally fine job, and let me add, we do not happen to share the same party affiliation, so this is a bipartisan tribute that is meaningful here.

Let me let him introduce his expert in the bus field.

Mr. O'CONNOR. Thank you, Congressman Simon, and thank you, Mr. Chairman and members of the committee.

Mr. SUNIA. Before you start, I do not want to interrupt you, but I want to ask this question of the Congressman, in case he has to leave before you have finished—I would like to ask him the questions so he will be free to leave at any time he has to.

Congressman, you discussed the record number of abandonments filed since enactment of the legislation. It is my understanding that applications for new service are also at a record pace. Might not the ease of entry that this indicates insure that new carriers will fill the void left by abandonment?

Mr. SIMON. Well, it sounds like it would superficially, Mr. Chairman. What in fact is happening is that the rural areas, where it is not very profitable, are being abandoned, and the profitable areas, the urban areas, where the cream is, that attracts the bus service. The problem with that is twofold. No. 1, there are virtually no new applications for service in rural areas, so the rural areas are not getting served. No. 2, I think there is a real danger even in the urban areas that you are going to end up with a very few huge bus companies getting monopolies. There is, for example, in the State of Illinois, a Crown Bus Co. that is now just a very marginal operation. If Greyhound tomorrow decides that they can take over this market and knock everybody else out—and let me say in fairness, I do not know that Greyhound wants to do that—but if they decide to do that, in a very short time, they can knock Crown out of business, or any other small bus operator. And once they get that monopoly, if we get down to one or two or three major bus companies serving this Nation, then you will see those prices go zooming up. So, what looks good on paper in fact is not so good.

Mr. SUNIA. Congressman Shuster, do you have any questions of Congressman Simon?

Mr. SHUSTER. I have no questions of my good friend, except to remind him of our longstanding agreement to form a publishing company called Simon and Shuster, and I am going to hold him to that.

Mr. SIMON. We are going to do that one of these days, Bud. [Laughter.]

Mr. SUNIA. I think we will go ahead and take all of the questions of the Congressman at this point.

Congressman Bosco.

Mr. BOSCO. Well, Mr. Shuster has been lucky enough to have others publish his books, but I suppose the rest of us might have to form our own publishing company.

Congressman, in the rural areas of Illinois that have had their bus service discontinued, have there been smaller, more efficient, van-type services or any other type of services started up, such as Congress anticipated would happen once the major carriers left?

Mr. SIMON. Not to my knowledge. I cannot speak absolutely here, and obviously, what you do have is friends and neighbors who help to provide assistance where they can. But it is not a substitute for regular service. And let me add, it is a problem not only for citizens who want passenger service, but it is also a problem for people who are looking for delivery of packages and for other things.

Mr. BOSCO. So would you say that primarily, it has been the rural areas that have suffered under this deregulation?

Mr. SIMON. I do not think there is any question about it.

Mr. BOSCO. Thank you.

Thank you, Mr. Chairman.

Mr. SUNIA. Congressman Smith.

Mr. SMITH. No questions.

Mr. SUNIA. Congressman Wolf.

Mr. WOLF. No questions.

Mr. SUNIA. Thank you very much, Mr. Simon.

Mr. SIMON. I thank you very much, and I hope my colleagues from Illinois will forgive me if I leave while they testify. But I hope we can work something out. I think this is an area where Congress took basically a good step, and now we have got to step back and take a look and see whether we do not need some kind of modification.

Thank you very much, Mr. Chairman.

Mr. SUNIA. We will now proceed with Mr. O'Connor's testimony. We have your full testimony on record, and it will be incorporated in its entirety. Please summarize or extemporize, as you see fit.

Mr. O'CONNOR. I will be very brief, Mr. Chairman. Let me say first of all, I am accompanied by Tom Myers from the Transportation Division of the Illinois Commerce Commission, and we have filed a copy of our testimony with the stenographer.

First of all, let me tell you what the Illinois Commerce Commission is. We are the public utility commission in Illinois. I am also here representing the National Association of Regulatory Utility

Commissioners, which is the organization of utility regulators around the country.

Let me just emphasize what it is we are not asking for. We are not asking for money. We are not asking for a program of cross-subsidies. And we are not asking for reregulation. What we are asking for is what I think is a fairly modest but important change in the Bus Regulatory Reform Act, which would be a prior notice amendment.

The objective of the prior notice amendment is to get the States, the local communities, and for that matter, the Interstate Commerce Commission and the bus companies, all involved early in the process in looking for the opportunities for replacement service. We are more than willing to see competition and free enterprise to be the prime determinants of how it is we establish adequate intercity bus transportation for people; but we really cannot do that if we are stuck with a process that essentially denies us the opportunity to go out and solicit that replacement service and denies us the necessary information.

The prior notice amendment that is before you in the bill sponsored by Congressman Simon does several important things, and I will not get into the details of it, since you have it, and you have the testimony, and we have a chart here which lays out the process. But the essence of it is that with respect to exit of a bus company from routes, we would have early warning and involvement; there would be an adequate, three-step process that would take us through in very orderly fashion for that abandonment if it occurred, and we would get adequate information all the way along the process in order to deal with it correctly. Second, the States would become involved again in having some control over scheduling, but only where there was a very low level of service. We do not want to get into the business of regulating schedules when there is a lot of service, but we do want to make sure that the schedules at low levels of service are appropriate for the market, in that they do not discourage ridership, for instance, and actually become a self-fulfilling prophecy.

With respect to entry, we want more involvement in that, but we want to know early on about entry, so that we do not end up actually knocking out low-cost providers of service. And let me say in response to the chairman's question about the applications that in Illinois, the bulk of these new applications are, as Congressman Simon noted, for the highly profitable routes, and I think the majority of those have been with respect to O'Hare International Airport. I mean, they are really only going from communities in outlying areas of the suburbs or downstate to O'Hare International. That is really not intercity transportation as we are trying to address it in this context.

Finally, the focus of the bill is on cooperation—not forcing people to do a lot of things, but structuring cooperation between Federal, State, local governments and the bus companies.

That is what we are after, and we think that with the kind of process that is being suggested here, we can avoid forcing the bus companies to stay in unprofitable routes, but nevertheless give adequate opportunity and information, most importantly, for new carriers to come in. It is so important to the smaller communities. I know Congressman Bosco's district very well. I grew up in Napa, Calif., and when I went to college in San Francisco, I worked with the blood bank in San Francisco, and the way that we got blood to places like Trinity Hospital and other places in Alta, Calif., was on the overnight or the daily service of Greyhound. So I think that Congressman Patman's testimony is something that applies to every State. It is service that is important, and we would like to help maintain it.

Mr. Chairman, I would be prepared to respond to any questions you or the committee may have.

Mr. SUNIA. Thank you very much, Mr. O'Connor.

I have just one question, Mr. O'Connor. Have you made any efforts to get the bus companies voluntarily to provide the States with advance notice of intent to discontinue, to file such plans on an annual basis—and if you have made such efforts, what have been the results?

Mr. O'CONNOR. Well, in general, let me say that initially, we had a very hard time getting information, and that the information came only after rather lengthy delays, well after the initial notice that the companies were going to abandon the routes. And that has been the major problem. It has not been for us that we never get the information. It is that we get it so late in the process that it really does not do us any good, because by that time, they are well down the road toward abandonment, and you really, at most, probably have a couple of months to go out and find somebody to replace that service.

So we have made continuing efforts in all the hearings, and in some cases, of late, we have had some additional cooperation—but I am afraid that has come only after we have made it clear that we had to come to the Congress and seek assistance to get them to do what they should have been doing in the first place.

So we have been working on it. We realize that a law is not the solution to everything, and we have tried cooperation, but I am just afraid that if this effort goes by the boards, this modest proposal, that we will be back where we started, which is withholding of information and long delays.

Mr. SUNIA. Thank you.

Mr. Smith.

Mr. SMITH. No questions, Mr Chairman.

Mr. SUNIA. Congressman Bosco.

Mr. BOSCO. Thank you, Mr. Chairman.

Mr. O'Connor, I admire your willingness not to ask for money or reregulation, but may I ask, do you feel that prior notice will provide bus service for the rural areas? I mean, is prior notice going to be a solution to the problem, and if not, how do you expect that rural people will have a public transportation system?

Mr. O'CONNOR. Well, I would be dishonest if I were to say that I was 100 percent convinced that a prior notice amendment would solve all the problems. I am not sure that it will. On the other hand, I feel it is incumbent upon those of us who are doing this regulation in the trenches every day to be realistic about the approach. We think that this prior notice amendment gives the additional tools necessary to the State regulators to at least make a real run at making the competitive market work and to provide service to the rural communities.

Now, it may well be that if the Congress were to enact this prior notice amendment, that we might be back here in a couple of years, apologizing because it did not work. But I think it is a much better shot, quite frankly, than going for an effort to force companies back into unprofitable routes or to look for a large system of subsidy. So we are just trying to be realistic. I think it will work. We have had some moderate success in Illinois on those occasions when we have had the time to get out and get alternative carriers. We have had a couple of situations where that has worked. We think it could work in other areas.

Let me just add one more thing. The real problem here on profitability is not so much the revenues derived from those routes, but is very much the cost to the carrier of those routes. To the extent that a high-cost carrier is allowed to abandon the route, we may be able to go out and find low-cost carriers that can provide pretty adequate service and make do on the revenue that they can actually derive from that route. So this is not just a hard-and-fast thing that there is only so much revenue, and that the costs are fixed. You can change those costs by getting a different sort of carrier.

So we are more than happy to make the effort at this one and try to stem the tide.

Mr. Bosco. May I ask, Mr. O'Connor, do you find a problem with the threat of some of the main carriers coming back into a route, that that keeps competitors away from making the investments that would be necessary to service some of these outlying areas?

Mr. O'CONNOR. Well, Mr. Myers has been watching that one. He deals with it every day. If it is all right, I would ask him to respond to that.

Mr. Bosco. Sure.

Mr. MYERS. We did have one situation like that where we had a mayor of a small town who happened to operate a truck company, who stood up at a public hearing and said that he could buy a bus and operate on a particular route that was about to be abandoned, but his concern was that someone else would come onto the market after he had reestablished a ridership base and essentially put him out of business, and the carrier that was abandoning the route made it very clear that, yes, the deregulation bill allowed them to do that, and that while they were not saying they would, the threat was there. And at that point, the man just said, "Well, in that case, I won't bother." So the route right now has no service whatsoever. So it is just the pending threat of another carrier coming in that, in some cases, discourages very small operators from entering these routes.

Mr. Bosco. Thank you.

Mr. SUNIA. Congressman Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

Just two brief questions. Is time basically what you are looking for?

Mr. O'CONNOR. Actually, less time than information early in the process.

Mr. WOLF. Information early in the process, plus time?

Mr. O'CONNOR. Plus a little bit of time, yes.

Mr. WOLF. Do you think perhaps the fact that the Surface Transportation Committee has held these hearings, and that all of you have taken the time to come to Washington, that that might help alleviate the problem if it is covered adequately in the trade press about the need?

Mr. O'CONNOR. Oh, I have been around the block, Congressman, and I wish that were true. I think it has heightened the awareness of the bus companies. I think it has made it clear to them that there is a willingness by the regulators to try to figure out a rational solution to this thing rather than just coming back and reregulating. And, as I noted earlier, we have begun to get a little more cooperation, but I am very skeptical that that cooperation will maintain over the long run, if we do not have something literally requiring them to cooperate.

Mr. WOLF. Has your national association met with the American Bus Operators Association?

Mr. O'CONNOR. I believe that the transportation group has had ongoing meetings.

Mr. MYERS. We just met very briefly with their legislative people, but we have not had an opportunity to really discuss legislation with them.

If I might respond to one other point, and that is one of the focal points of the prior notice amendment is to get the communities involved in the process, and make them, first of all, aware that service is threatened, that they are located on a route that could be subject to abandonment. Hopefully, that will stimulate ridership just by virtue of the fact that there is information provided about it, and people start talking about it. Our experience has been that in many cases, people in small communities are not even aware that they have the service, so that this would be a tonic effect in that respect. And possibly, local communities might be able to generate subsidies. Some States may have a subsidy program. But the important point is that the local communities start at least taking some responsibility for the fact that they have to generate ridership to support the service.

Mr. WOLF. I guess this may not be a fair question, and I will read the testimony later on, but what has the American Bus Association said with regard to the prior notice?

Mr. MYERS. They have not responded at this point. We have not had a chance to get back to them yet.

Mr. WOLF. That probably might not be a bad idea, though, because as some of them believe with regard to an abandonment that potentially another one of their members will be coming in—I would encourage you maybe in the meantime to have a delegation from your group meet with them and see if perhaps you can work something out on it.

Mr. O'CONNOR. Yes, that is an excellent suggestion. As a matter of fact, the National Association of Regulatory Utility Commissioners is having its national meeting the week of November 14, and we will, after this hearing today, attempt to get a few representatives to come and meet with the transportation committee at that time.

Mr. WOLF. And I think you can point to the fact that the committee took the time, and there is interest on Capitol Hill, and use that as a point to get together on some sort of reconciliation to resolve the matter, which maybe would not require legislation. But anyway, thank you.

Mr. SUNIA. Congressman Rahall.

Mr. RAHALL. No questions.

Mr. SUNIA. Thank you very much, gentlemen. You know, of course, that the industry will be up later on, and they might have some interesting things to say about your comments.

Next, we will have the West Virginia Public Service Commission, and Mr. Crabtree, Ms. Taylor, and Mr. Capaldini.

Congressman Rahall, I wonder if you would like to recognize your friends and introduce them for the record.

Mr. RAHALL. Thank you, Mr. Chairman.

It does give me a great deal of pleasure this morning to welcome to the subcommittee two individuals from my home State of West Virginia who have been deeply involved with the Bus Regulatory Reform Act. They have traveled here to testify because of their deep concern over the continuation of bus service to rural areas of this Nation and our small communities.

Both of them have first hand experience with the implementation of the act, and I would like to introduce them at this time. I might say before I do that Mr. Lou Capaldini, the president of the American National Bank of Logan, was supposed to have been with us this morning and has been delayed.

The first individual that I would like to introduce is a very dear friend of mine. She is Hilda Taylor, the clerk of McDowell County, and will provide the subcommittee with her views on the importance of bus service to the people of southern West Virginia. She has been very instrumental in our recent efforts to prevent the Virginia Stage Lines from discontinuing its service in southern West Virginia. She is highly respected among the senior citizens of McDowell County and among all the constituents that she and I share in common in our representation of their best interests. She is a fighter for the people of her area. Indeed, it gives me a great deal of pleasure to have her present her views before our congressional subcommittee this morning.

Also with us, Mr. Chairman, is the director of the West Virginia Public Service Commission's Motor Carrier Division, Mr. Frank Crabtree. He will give us his perspective as a State-level regulator, and I might add that Mr. Crabtree has been very helpful to me and my office in the information that he has provided and in his advice as to how we can both meet the needs of the people in West Virginia.

On September 9, 1983, the ICC denied a petition by the Virginia Stage Lines, a wholly owned subsidiary of Trailways, to discontinue bus service in southern West Virginia. It is my understanding that this is the only case in which the Commission took such an action. In all others, the ICC has granted permission for the carrier to discontinue service. This case holds great importance, Mr. Chairman and members of the subcommittee, not only because it is precedent setting, but also because it involves all of the issues which we will be investigating today, including how route scheduling changes can be used as de facto abandonments; the public interest and unreasonable burden on interstate commerce tests, which must be considered by the ICC, and other factors, such as whether the service is the last to a community and whether efforts have been made to provide alternative service.

In these days of deregulation in about every field, it is important, I believe, that we not only look at perhaps some advantages that have been gained by those in the larger markets and larger cities of our Nation, but as this subcommittee is doing, Mr. Chairman, it is important that we look at some of the disadvantages that have been incurred and that have been borne mainly by those who live in small, rural areas of this Nation. We have done this through this committee's oversight functions on not only bus deregulation but airline deregulation, trucking deregulation and railroad deregulation before the Energy and Commerce Committee. I know that we will continue this important responsibility of ours.

So it gives me great pleasure at this time, Mr. Chairman, to introduce to you Mr. Frank Crabtree and Ms. Hilda Taylor.

Mr. SUNIA. Thank you very much, Congressman.

Let me now recognize Mr. Crabtree, and let me say that the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

THE BUS REGULATORY REFORM ACT OF 1982—1 YEAR LATER: A STATE REGULATORY PERSPECTIVE

(By Franklin G. Crabtree, Director, Motor Carrier Division, West Virginia Public Service Commission, State Capitol, Charleston, W.Va.

I. INTRODUCTION

Good morning. My name is Frank Crabtree. Today I would like to address the impact of the Bus Regulatory Reform Act of 1982 from the perspective of a state regulatory body. I have worked the past five and one-half years as a regulatory attorney, and the last two and-one half years as Director of Motor Carrier Division for the West Virginia Public Service Commission. In this capacity I have had the opportunity to work with various sections of the Act in cases filed with the Commission over the last 12 months.

In West Virginia we were concerned with certain provisions of the Bus Regulatory Reform Act early on, specifically the preemptive aspects of Sections 16 & 17, and our concerns with this legislation were expressed to members of the House and Senate during its consideration of the bill. I must say some of our worst fears have been realized since that time.

Within ten days of the effective date of the BRRA both Greyhound and Virginia Stage Lines, an operating subsidiary of Trailways, Inc., filed petitions for massive route abandonments in West Virginia. With few exceptions, these service abandonments adversely affected people with no other feasible means of intercity transportation. As you have heard, or will hear, citizens of these communities relied heavily on bus transportation to meet an array of needs - personal, economic, educational, medical and political.

As a result of filings made in West Virginia pursuant to this legislation some 36 scheduled communities, as well as points in between, are without bus service - service available less than one year ago - and another 23 communities are presently threatened with total service abandonment. (Attachment 12). There appears to be no way to undo what has already been done in respect to these communities. But the scope of this legislation, in terms of societal impact, is a continuing story. Unless certain measures are taken by Congress in the near future, the unmet transportation needs of largely rural states such as West Virginia will continue to grow.

In contrast this body will probably hear and have the opportunity to address concerns of more urban states where relaxed entry standards in Section 6 of the Act are responsible for destructive competition and unfair pricing. Although these are valid concerns, West Virginia's problems with the Act go to more basic needs. Most distressing from West Virginia's point of view is the ICC's failure to properly interpret and implement Congressional intent in its review of state decisions denying exit petitions. These problems are compounded by ICC rules and decisions which presume short-sightedness on the part of states and good faith on the part of the bus industry. Neither of these presumptions are necessarily accurate. As I hope to demonstrate today, quite the opposite sometimes may be true.

Before I leave the area of the more liberal entry policy expressed in Section 6 of the Act, I would like to address the impact of this policy in abandonment cases. Generally, Section 6 makes entry quite easy for any carrier demonstrating financial responsibility and equipment safety. This is a step in the right direction. However, Section 6 is used as a scapegoat by major carriers wanting to abandon service under Section 16. The standard argument goes like this: abandonment will clear the way for the smaller entrepreneur who, with the advantage of lower overhead and operating costs can provide a more efficient profitable service over the abandoned route. Examined in the abstract, this appears to be a supportable proposition. But this rational breaks down when superimposed on small communities with two-lane highways and unique transportation needs. If a super-carrier with the vast resources, low cost of capital and economies of scale cannot succeed on certain mostly rural routes, I question the ability of the smaller carrier. Certainly most small carriers would operate in a manner different from Greyhound and Trailways on some routes examined in West Virginia where people for the most part are uninformed of what service is being offered, when it is being offered or even where to call for this information.

To be fair, however, we must give large carriers their due, because some states have been historically recalcitrant to accept reality on requests to reschedule or abandon service. Regulatory lag has played a part in the carriers' dilemma. Significantly, private carriers rarely receive government subsidies as do transit authorities and nonprofit organizations which provide some limited transportation services. Thus, to some extent regulatory bodies should be held accountable for conditions requiring reform. But the industry also has played a part in creating this unfortunate situation. Historically the regulatory environment has supported empire-building by the super-carriers, approving service monopolies, mergers and consolidations and chasing elusive costs with rates to the extent that efficiency incentives were nonexistent. Now via the Bus Act these carriers propose to capitalize on this old-line regulatory thinking, born of captive markets, to relieve them from the responsibility for prudent management. In large part, recent victims of the abandonment provisions in §16 are actually victims of this government-condoned "goldplating" whereby costs were allowed to escalate at a rate far superior to revenues. Thus, the empire is collapsing on the very people, routes and communities which made it what it is today.

II. PUBLIC IMPACT RECONSIDERED - UNCONSIDERED?

Under present law the ICC must approve a carrier's abandonment request unless it finds that objectors have proven that the proposed discontinuance is inconsistent with the public interest or that discontinuance will not constitute an unreasonable burden on interstate commerce.

Of course the ICC is required to accord great weight to the disparity, if any, between variable costs and revenues when applying the financial impact portion of this test.

The Commission must exercise its discretion in according appropriate weight to other considerations including the National Transportation Policy, offers of subsidy and whether the service to be abandoned is the last public transportation between affected areas.

The twenty exit decisions rendered to date suggest a reluctance on the federal level to acknowledge and apply the exit test consistent with legislative intent. (Attachment 9). I'll be the first to admit that these decisions go to great lengths in analyzing the cost/revenue aspect of the test, but it appears the ICC has given little weight to the coequal public impact component -- and I use the term "coequal" with some authority since in floor debate on this bill several of you and your colleagues expounded on this point. (See generally, Attachment 2). Chairman Howard himself clearly stated the intent underlying this bill on November 19, 1981:

> This bill, as previous regulatory bills, is regulatory reform and not total deregulation. This result was thought to be the best approach.
>
> ***
>
> Conversely, it permits them to abandon segments of their operations unless such actions are not consistent with the public interest or such abandonment is not an undue burden on interstate commerce. The ICC is to oversee these processes in a manner that requires that agency to examine the effects on service to small communities and commuter services.

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> Finally, the bill gives special consideration to small communities' service and commuter services. They are singled out for special consideration in the provisions of the bill dealing with entry, exit, reduction in service, and removal of operating restrictions. The overall intent is to maintain and improve these types of services. (Attachment 2, pp. 3-4).

But since the ICC had testified on this bill in favor of automatic exit, siding with industry, concerns were appropriately raised by Congressman Kazen:

> So, you know, (there are) two strikes against the states when they come up on appeal arguing against exit if the ICC has already made up its mind and has argued and has the position that they favor automatic exit. It creates a doubt in my mind as to whether or not, whether we say it in the law or not, whether the ICC will kind of lean toward their position because they have made their position known. (Attachment 2, pp. 6-7).

Accordingly, some Congressmen asked for assurances that the public interest was adequately protected:

> Mr. RAHALL. Mr. Chairman, I do have one last question. Will the "public interest" criterion contained in the exit provisions of H.R. 3663 carry as much weight with the ICC as economic considerations?
>
> Mr. ANDERSON. Mr. Chairman, the intent of this bill is to insure that the public interest test has an equal emphasis with economic considerations and the ICC interpreting otherwise would be a regulatory charade. The act does not create, and the Public Works and Transportation Committee would not condone, such a charade. (Attachment 2, p. 9; Attachment 3).

It further appears that the industry was very successful in allaying concerns for abandonments in rural areas:

> Mr. RAHALL. ...I am further assured that service will continue to the small communities of my district through meetings with representatives of Greyhound and Trailways - both of which serve the southern part of West Virginia. According to a letter sent to me by William L. McCracken, Senior Vice President of Greyhound Lines, Inc., and dated November 17, 1981, "While an absolute guarantee with respect to future service is not possible, we feel very comfortable in assuring you that we have no present plans to change our service nor can we foresee any reason to significantly change that service in the coming years." (Attachment 2, pp. 9-10).

One short year down the road from the effective date of this legislation you will find bus service in West Virginia significantly changed.

Furthermore, the exit decisions rendered to date evidence a definite leaning on the part of the ICC toward automatic exit. The ICC is not considering public interest equally with economic considerations as prescribed by Congress. Its exit decisions indicate that a charade is being conducted. (Compare Attachments 4 and 5, generally, to Attachment 10, pp. 13-21, and Attachment 11, pp. 13-22). I urge this body to implement its intent in no uncertain terms to correct this abuse.

III. THE SCHEDULING SHELL GAME

Next, I would like to address scheduling of intercity bus transportation and its effect on ridership. As you know, Section 17 prohibits state intervention where a carrier proposes rescheduling of existing passenger service. Significantly, the bus company can adjust schedules as often as it likes and in any manner it pleases, subject only to 30 days advance notice. It's easy to predict the effect on ridership of multiple adjustments or inconvenient time-of-day scheduling on a certain route. The service loses its value to the community and many needs go unmet. Thus, the company can effect de facto abandonment subject to the review of no one.

Moreover, complete freedom in respect to scheduling service can make low ridership a self-fulfilling policy. A carrier may write its own ticket, so to speak, and mold its ridership statistics for abandonment purposes by manipulating timetables over a relatively short time span, intentionally providing erratic service at extreme off-peak hours between certain points.

Why, you might inquire, would a carrier intentionally reduce ridership by means of schedule manipulation? I suggest the major companies are engaging in this practice to free more of their resources to compete in newer and denser markets spawned by entry deregulation. The smaller, usually rural, more marginal intrastate routes are being sacrificed, with ICC blessing, for more lucrative hauls over the interstate highway system. The Act's lenience and presumption of good faith on the carriers' part prompted one company to proclaim in its pleadings that it would be happy to continue serving the West Virginia routes in question if it were subsidized to the extent of fully allocated costs plus 20% profit. (Attachment 1). I submit that this cavalier attitude presently prevails throughout much of the intercity bus industry.

Ladies and gentlemen, the needs of the traveling and shipping public in West Virginia, as well as citizens of other rural states, cannot be met by carriers interested only in operating over paths of least resistance and maximum profit. Nor does Congressional intent as expressed in the Act, condone such an interpretation or attitude. Complete scheduling freedom - unchanged - epitomizes federal naivete at best, insensitivity at worse, when it comes to public transportation needs in rural America. More specific statutory safeguards are warranted - safeguards which permit states to deny rescheduling attempts and to prescribe timetables on routes where service has been reduced to minimum levels.

IV. AN OPERATION MEANT TO FAIL

One of the most frustrating fallacies of the ICC's interpretation of the Act is an implied presumption of good faith or best efforts on behalf of the carrier petitioning for abandonment under Section 16. The cost/revenue analysis does not explicitly require that body to analyze the carrier's own contribution to low ridership which may exist on certain routes. As a result the carrier finds it more expedient to let ridership decline on a marginal route rather than expend the effort necessary to promote service since the cost/revenue analysis does not discriminate between self-inflicted injury and prudent management.

A most striking example of management apathy surfaced in Greyhound's recent route abandonments in West Virginia, but arguments pointing out this abuse fell on deaf ears at the ICC. Specifically, the record developed at the state level contained uncontroverted evidence that Greyhound had made little effort, if any, to mitigate its alleged loss position. The state's hearing examiner in that case found:

> The record is replete with testimony indicating that the Petitioner has failed to sufficiently inform passengers and potential passengers, as well as shippers and potential shippers, of services available to them. Indeed, in the words of one protestant, in some areas it appears that the Petitioner has conducted "an operation meant to fail." (Attachment 11, page 29).

In fact, Staff's brief to the ICC cited extensive testimony and evidence clearly establishing that scheduling information in some of the affected communities was difficult to obtain, at best; that advertising of services was nonexistent; and suggesting that available cost savings went ignored by the company. (Attachment 11, pages 29-36).

In its decision reversing the West Virginia Commission's refusal to help those unwilling to help themselves, the ICC summarily discounted and disposed of this overwhelming evidence of public interest abuse:

> Finally, complaints concerning petitioner's service schedules and advertising policies do not support the argument that petitioner has failed actively to promote ridership. As a national

> carrier, Greyhound advertises in media throughout the country. It cannot, however, be expected to advertise regularly in every local publication. Contentions at the State hearings that individuals had difficulty obtaining scheduling information are to be expected in rural locations where information is not as readily available as in urban centers. For all these reasons, the record will not support allegations that Greyhound has contributed to losses on these routes by failing to take reasonable management initiatives. (Attachment 4, page 12).

Thus, I feel compelled to restate our contention that while Congress appropriately has chosen to assist those carriers whose good faith efforts have produced no appreciable results in stimulating service usage, Section 16 of the Bus Act was never intended to help those unwilling to help themselves; and unless the ICC's interpretation of the cost/revenue test expressed in the Bus Act is to be deemed a regulatory charade, this body should make its intentions crystal clear -- that the Bus Act will not be used, or abused, to extricate the bus industry from relatively unproductive routes where it has conducted an operation meant to fail.

V. CONCLUSION

Contrary to what you might surmise from this testimony, West Virginia does not seek repeal of any provision of the Bus Act. We acknowledge that the industry has been thrust into a situation quite different from that of several decades ago when intercity travel by personal auto and other competitive modes was not feasible for most people. We recognize that subsidies from profitable routes should not be squandered on the provision of superfluous service.

On the other hand, we believe that Act requires the continuation of routes where ridership may have declined due to mismanagement but where service is still in the public interest. It is this factor which the ICC has chosen to ignore, and the Oversight Committee should address this ignorance.

We concur with resolutions of the Southern Legislative Conference and the Southern Governors' Association recommending amendment of Sections 16 and 17 to more closely guide the ICC and states in their roles in exit and rate cases. (Attachments 6 and 7). We specifically endorse the amendment submitted by the Illinois Commerce Commission requiring:

(1) Prior notice to the states of route abandonments;

(2) Clarification of congressional intent in respect to ICC consideration of complete service abandonments in rural communities;

(3) Reducing the risk of extreme off-peak scheduling, and thereby ridership manipulation, where service has already been reduced to minimum levels; and

(4) Federal and state cooperation in developing regulatory approaches designed to preserve bus service to otherwise isolated communities. (Attachment 8).

Importantly, the Illinois Prior Notice Amendment (PNA) appropriately addresses state problems with severe time restraints imposed by the Act. The PNA would require a carrier to indicate particular routes it may attempt to abandon in the following year. Thus community and state officials, as well as present and potential customers, would be alerted in advance to the threatened loss of bus service. Within thirty days the carrier could file its "Notice of Intent" to abandon, along with ridership and revenue data on which it intends to rely. The carrier would follow the "Notice of Intent" with its abandonment petition within 60 - 90 days. States would have 90 days from filing to reach a decision. Significantly, this procedure would give states an additional thirty days to analyze carrier data, make information requests, assess and mobilize public input, hold hearings and reach a decision. The corresponding burden on the carrier would be _de minimus_.

The PNA would provide an opportunity for the more complete development of an evidentiary record on the state level, giving both the state and the ICC a more informed opportunity to implement provisions of the Act in accordance with the goals expressed therein.

I submit that time is of the essence if these goals are to be achieved. The industry continues to reduce and abandon service across the country at the expense of those least able to pay or to articulate their concerns.

The Act as we view it should be interpreted consistent with the intent of Congress -- as regulatory reform and not as deregulation of the intercity bus industry.

It should be implemented to reduce unnecessary regulatory burdens while preserving a minimum level of service.

It should not be abused by carriers who have conducted an operation meant to fail in an attempt to maximize profit at the expense of those in need of basic public transportation.

For all these reasons we urge this Committee to recommend appropriate amendments to the Act.

FGC
Attachment 1

GREYHOUND LINES, INC.

FREDERICK DUNIKOSKI
PRESIDENT

January 24, 1983

TO WHOM IT MAY CONCERN:

Greyhound Lines, Inc. is a private corporation incorporated in the State of California and is not receiving any subsidy for operations conducted over the affected routes in the State of West Virginia.

Greyhound offers to maintain service over the affected routes at a level of service to be established by the State of West Virginia, or any financially responsible person, provided such subsidy or financial assistance for providing the service is equal to the fully allocated cost per bus mile plus 20% profit less any operating revenues generated by service.

This offer expires on April 28, 1983.

F. Dunikoski

GREYHOUND TOWER · PHOENIX, ARIZONA 85077

Attachment 2
Page 1 of 12

There are numerous safeguards built into this legislation to protect rural areas. Now, the safeguards are not absolute. If we are going to talk about getting the Government out of regulation, particularly the conservatives, then on the one hand we cannot say we want less Federal regulation but on the other hand we want the Federal Government to make it impossible for free enterprise to decide where and when they want to market their products and services.

So I would simply urge my colleagues to listen to the general debate, with particular emphasis on the protections which are provided for rural America.

Mr. TAYLOR. May I respond to the gentleman? If these safeguards are contained within this legislation, then let me ask the gentleman this: Why all of the speed in passing this bus thing on a railroad track?

Mr. SHUSTER. This is a matter of the scheduling of the House. And as the gentleman knows, the minority does not schedule legislation.

I would answer the gentleman, however, that we have had months of hearings on this issue. There is bipartisan support in our committee, in the subcommittee and in the committee, and this was passed out unanimously.

Mr. TAYLOR. And the airline deregulation was also. And I voted for it.

Mr. SHUSTER. I am not here to debate any airline deregulation today. I am here to support the bus regulatory reform and with special emphasis on the protections which are provided for rural America.

Mr. TAYLOR. And these protections, I assume, will be brought out and clearly described within the debate that will ensue?

Mr. SHUSTER. That is certainly my intention, I would say to my friend.

Mr. TAYLOR. I would certainly urge everyone from the rural areas to be here to listen to this, to be sure that you are adequately protected by these safeguards that will be described by the Members who will be handling this bill on the floor, because I think it is important that you satisfy yourselves that these protections are there.

Mr. ERTEL. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. I thank the gentleman for yielding.

Just to correct one thing, I think the gentleman may have made a slight overstatement. Airline deregulation did not come out of Public Works unanimously. This did. If you will recall, there was at least one vote against airline deregulation coming out of committee.

Mr. TAYLOR. I think there was two. I recall now that the Senator from South Dakota (Mr. ABDNOR) at that time voted against it, and that is probably the reason he is in the Senate today.

Mr. KINDNESS. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Ohio.

Mr. KINDNESS. I thank the gentleman for yielding.

I have asked the gentleman to yield to me in order to direct a question on the procedure here. I know of no way to avoid the rather hasty consideration of this bill today except to defeat the previous question on the rule.

With all due respect to the Committee on Rules, which has reported this rule, I feel very much like the gentleman, only I read a different conclusion. I really think we ought to resist this rule. It is a little too sudden. I would certainly urge that that be the procedure.

Mr. HOWARD. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the distinguished chairman of the Public Works Committee.

Mr. HOWARD. I would just like to say to the gentleman that I do intend to ask for a recorded vote on the rule.

Mr. RAHALL. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from West Virginia.

Mr. RAHALL. As a representative of a rural district and as a member of the subcommittee and the full committee that considered this legislation, I can assure the gentleman and those on the minority side that I do plan on a full discussion of the effect on the small communities that this legislation will have.

I would hope, though, that we could have a vote on the rule and move into the general debate on the bill itself, where I think you will find assurances that the effects on small communities have been taken into account in the consideration of this legislation.

Mr. TAYLOR. Just let me say at this time that I do not mean this as a criticism of the Public Works Committee. I have a high regard for the membership of this committee. I think they are trying to solve a problem that does exist. We all know that we have a bus industry that is in trouble. We know there is a big press on for deregulation. But I do want to raise the flag of saying that we better take a look at it because transportation in rural America can be affected by this.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. ALEXANDER).

☐ 1245

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. ALEXANDER. Mr. Speaker, in his news conference last week the President assured Americans that inflation is caused by a spendthrift Congress thereby excusing his economic policy as a party to the crime.

Today, we hear from the White House that Mr. Reagan intends to veto the appropriation bill (H.J. Res. 357) even though it appropriates less money than the President has requested for fiscal year 1982.

Let us not be confused by the facts. But, someone is confused.

After almost a year of closely observing the President's economic statements, I am better equipped to understand why Reaganomics was once characterized as "voodoo" by then candidate GEORGE BUSH.

His proposals have more to do with politics than economics. Ronald Reagan's words work political magic in the minds of the American taxpayer who desperately seeks a solution to the corrosive inflation which gradually lowers his standard of living.

Tomorrow, the President threatens to veto House Joint Resolution 357, further continuing appropriations, 1982. Once again Mr. Reagan will stick his Presidential pin in the congressional doll hoping to again work political magic by casting a spending spell over a democratically controlled House.

Not only has the House appropriated less funds than the President has requested for fiscal 1982, I am herewith submitting data which clearly shows that only once since 1943 has Congress spent more money than a President has requested. Furthermore, during the last two Republican administrations, Nixon and Ford, a democratically controlled Congress stubbornly appropriated $40.5 billion less than the Republican President requested.

Will this revelation of fact dispel the voodoo of Reaganomics? Only time will tell.

COMPARISON OF PRESIDENTIAL BUDGET REQUESTS AND CONGRESSIONAL APPROPRIATED AMOUNTS ENACTED IN REGULAR ANNUAL, SUPPLEMENTAL, AND DEFICIENCY APPROPRIATIONS BILLS

Calendar year	Presidential budget requests	Congressionally appropriated amounts	Congressionally appropriated amounts less (−) or more (+) than Presidential request
1943	$115,041,366,395	$110,634,660,785	−$4,406,705,610
1944	63,513,471,020	61,257,906,152	−2,255,564,868
1945	62,453,310,868	61,042,345,331	−1,410,965,537
1946	30,051,109,870	28,459,502,172	−1,591,607,698
1947	33,367,507,923	30,130,762,141	−3,236,745,782
1948	35,409,550,523	32,699,846,731	−2,709,703,792
1949	39,545,529,108	37,825,026,214	−1,720,502,894
1950	54,316,658,423	52,477,926,629	−1,838,731,794
1951	96,340,781,110	91,059,713,307	−5,281,067,803
1952	83,964,877,176	75,355,434,201	−8,609,442,975
1953	66,568,694,353	54,539,342,491	−12,029,351,862
1954	50,257,490,985	47,642,131,205	−2,615,359,780
1955	55,044,333,729	53,124,821,215	−1,919,512,514
1956	60,892,420,237	60,647,917,590	−244,502,647
1957	64,638,110,610	59,589,731,631	−5,048,378,979
1958	73,272,859,573	72,653,476,248	−619,383,325
1959	74,858,472,045	72,977,957,952	−1,880,514,093
1960	73,845,974,490	73,634,335,992	−211,638,498
1961	91,597,448,053	86,606,487,273	−4,990,960,780
1962	96,803,292,115	92,260,154,659	−4,543,137,456
1963	98,904,155,136	92,432,923,132	−6,471,232,004
1964	98,297,358,556	94,162,918,996	−4,134,439,560
1965	109,448,074,896	107,037,566,896	−2,410,508,000
1966	131,164,926,586	130,281,568,480	−883,358,106
1967	147,804,557,929	141,872,346,664	−5,932,211,265
1968	147,908,612,996	133,339,868,734	−14,568,744,262
1969	142,701,346,215	134,431,463,135	−8,269,883,080
1970	147,765,358,434	144,273,528,504	−3,491,829,930
1971	167,874,624,937	165,225,661,865	−2,648,963,072
1972	185,431,804,552	178,960,106,864	−6,471,697,688
1973	177,959,504,255	174,901,434,304	−3,058,069,951
1974	213,667,190,007	204,012,311,514	−9,654,878,493
1975	267,224,774,434	259,852,322,212	−7,372,452,222
1976	282,142,432,093	282,536,694,565	+394,262,572
1977	364,867,240,174	354,025,780,783	−10,841,459,391

COMPARISON OF PRESIDENTIAL BUDGET REQUESTS AND CONGRESSIONAL APPROPRIATED AMOUNTS ENACTED IN REGULAR ANNUAL, SUPPLEMENTAL, AND DEFICIENCY APPROPRIATIONS BILLS—Continued

Calendar year	Presidential budget requests	Congressionally appropriated amounts	Congressionally appropriated amounts less (−) or more (+) than Presidential request
1978	348,506,124,701	337,850,466,730	−10,656,657,971
1979	397,653,765,836	386,822,093,291	−10,831,672,545
1980	340,329,446,763	333,685,164,197	−6,644,282,566

Source: Committee on Appropriations, U.S. House of Representatives.

Mr. MOAKLEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. HOWARD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 306, nays 80, not voting 47, as follows:

[Roll No. 323]

YEAS—306

Akaka
Albosta
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkinson
Badham
Bailey (MO)
Bailey (PA)
Barnard
Barnes
Beilenson
Benjamin
Bennett
Bethune
Bevill
Bingham
Blanchard
Boland
Boner
Bonior
Bonker
Bouquard
Brinkley
Brodhead
Brooks
Broomfield
Brown (CA)
Brown (CO)
Burgener
Burton, John
Burton, Phillip
Byron
Carman
Chappell
Chappie
Cheney
Clausen
Clinger
Coelho
Collins (IL)
Conable
Conte
Corcoran
Coughlin
Coyne, James
Coyne, William
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis
de la Garza
Dellums
DeNardis
Derrick
Derwinski
Dickinson
Dicks
Donnelly
Dorgan
Dougherty
Downey
Dunn
Dwyer
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
English
Erlenborn
Ertel
Evans (DE)
Evans (GA)
Evans (IA)
Evans (IN)
Fascell
Fazio
Fenwick
Ferraro
Fiedler
Fields
Findley
Fithian
Flippo
Foglietta
Foley
Ford (MI)
Ford (TN)
Forsythe
Fountain
Fowler
Frank
Frost
Fuqua
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Gregg
Guarini
Hall (OH)
Hamilton
Hammerschmidt
Hansen (UT)
Harkin
Hatcher
Hawkins
Heckler
Hefner
Heftel
Hertel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffords
Jenkins
Johnston
Jones (OK)
Kastenmeier
Kemp
Kildee
Kogovsek
Kramer
LaFalce
Lantos
Leach
LeBoutillier
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Madigan
Markey
Marlenee
Marriott
Martin (NC)
Matsui
Mazzoli
McClory
McCollum
McDade
McEwen
McGrath
McHugh
McKinney
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell (NY)
Moakley
Molinari
Mollohan
Moore
Morrison
Mottl
Murphy
Murtha
Napier
Natcher
Neal
Nelligan
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Parris
Patterson
Pease
Peyser
Pickle
Porter
Price
Pursell
Rahall
Railsback
Rangel
Ratchford
Regula
Rinaldo
Ritter
Rodino
Roe
Roemer
Rogers
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Rudd
Russo
Sabo
Santini
Savage
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sensenbrenner
Shamansky
Shannon
Sharp
Shaw
Shelby
Shuster
Simon
Skeen
Smith (IA)
Smith (NJ)
Smith (PA)
Snowe
Snyder
Solarz
Solomon
St Germain
Stangeland
Stanton
Stark
Staton
Stokes
Stratton
Studds
Swift
Synar
Tauzin
Traxler
Tribble
Udall
Vento
Walgren
Wampler
Washington
Waxman
Weaver
Weber (OH)
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Yates
Yatron
Young (MO)
Zablocki
Zeferetti

NAYS—80

Archer
Ashbrook
Beard
Benedict
Bereuter
Bliley
Brown (OH)
Broyhill
Butler
Campbell
Carney
Coats
Coleman
Collins (TX)
Craig
Crane, Daniel
Crane, Philip
Crockett
Dannemeyer
Daub
Dreier
Edwards (OK)
Emerson
Emery
Erdahl
Fish
Frenzel
Gunderson
Hall, Ralph
Hall, Sam
Hansen (ID)
Hartnett
Hendon
Hiler
Hunter
Jeffries
Jones (TN)
Kazen
Kindness
Lagomarsino
Latta
Leath
Loeffler
Lungren
Marks
Martin (IL)
McCurdy
Moorhead
Myers
Oxley
Pashayan
Patman
Perkins
Petri
Quillen
Roberts (KS)
Roberts (SD)
Robinson
Roukema
Rousselot
Sawyer
Schulze
Shumway
Siljander
Skelton
Smith (AL)
Smith (NE)
Smith (OR)
Spence
Stenholm
Stump
Tauke
Taylor
Thomas
Vander Jagt
Walker
Watkins
Weber (MN)
Wylie
Young (AK)

NOT VOTING—47

Addabbo
AuCoin
Bafalis
Bedell
Biaggi
Boggs
Bolling
Bowen
Breaux
Chisholm
Clay
Conyers
Courter
Deckard
Dingell
Dixon
Dornan
Dowdy
Duncan
Dymally
Fary
Florio
Garcia
Goldwater
Grisham
Hagedorn
Hance
Ireland
Jones (NC)
Long (LA)
Martin (NY)
Mattox
Mavroules
McCloskey
McDonald
Mitchell (MD)
Moffett
Montgomery
Paul
Pepper
Pritchard
Reuss
Rhodes
Richmond
Volkmer
Wilson
Young (FL)

☐ 1315

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. McDonald against.

Until further notice:

Mr. Addabbo with Mr. McCloskey.

Mr. Dingell with Mr. Courter.

Mr. Breaux with Mr. Bafalis.

Mr. Conyers with Mr. Paul.

Mr. Jones of North Carolina with Mr. Pritchard.

Mr. Long of Louisiana with Mr. Rhodes.

Mr. Montgomery with Mr. Martin of New York.

Mr. Reuss with Mr. Hagedorn.

Mr. Wilson with Mr. Dornan of California.

Mr. Mavroules with Mr. Young of Florida.

Mr. Mitchell of Maryland with Mr. Duncan.

Mr. Biaggi with Mr. Goldwater.

Mr. Moffett with Mr. Dymally.

Mr. Pepper with Mr. Garcia.

Mrs. Boggs with Mr. Ireland.

Mr. Florio with Mr. Mattox.

Mr. Richmond with Mr. Volkmer.

Mr. Hance with Mr. Grisham.

Mrs. Chisholm with Mr. Clay.

Mr. Dixon with Mr. Bowen.

Mr. Dowdy with Mr. Bedell.

Mr. AuCoin with Mr. Deckard.

Mr. McCURDY changed his vote from "yea" to "nay."

Mr. LOWRY of Washington changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. EDWARDS of California. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3663) to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. EDWARDS).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. KAZEN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 335, noes 33, answered "present" 1, not voting 64, as follows:

[Roll No. 324]

AYES—335

Akaka
Albosta
Alexander
Anderson
Andrews
Annunzio
Anthony
Ashbrook
Aspin
Atkinson
Bafalis
Bailey (MO)
Bailey (PA)
Barnes
Beard
Beilenson
Benjamin
Bennett
Bethune
Bevill
Bingham
Blanchard
Bliley
Boggs
Boland
Boner
Bonior
Bonker
Bouquard
Brinkley
Brodhead
Brooks
Broomfield
Brown (CA)
Brown (CO)
Brown (OH)
Broyhill
Burgener
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carman
Carney

Chappell
Chapple
Cheney
Clausen
Clinger
Coelho
Coleman
Collins (IL)
Collins (TX)
Conable
Conte
Corcoran
Coughlin
Coyne, James
Coyne, William
Crane, Daniel
Crane, Philip
Crockett
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis
de la Garza
Dellums
DeNardis
Derrick
Derwinski
Dickinson
Dicks
Dingell
Donnelly
Downey
Dunn
Dwyer
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Edwards (OK)
Emerson
Emery
English
Erlenborn
Ertel
Evans (DE)
Evans (GA)
Evans (IN)
Fary
Fazio
Fenwick
Ferraro
Fiedler
Fields
Findley
Fish
Fithian
Flippo
Foglietta
Foley
Ford (MI)
Ford (TN)
Forsythe
Fountain
Fowler
Frank
Frenzel
Frost
Fuqua
Gejdenson
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Gore
Gradison
Gramm
Gray
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hamilton
Hammerschmidt
Hansen (ID)
Hansen (UT)
Harkin
Hartnett
Hatcher
Hawkins
Hefner
Heftel
Hendon
Hertel
Hightower
Hiler
Hillis
Holland
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Jacobs
Jeffords
Jeffries
Jenkins
Johnston
Jones (OK)
Jones (TN)
Kastenmeier
Kemp
Kildee
Kogovsek
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
LeBoutillier
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Madigan
Markey
Marlenee
Marriott
Martin (IL)
Martin (NC)
Mazzoli
McClory
McCollum
McDade
McEwen
McGrath
Mica
Michel
Mikulski
Miller (OH)
Mineta
Minish
Mitchell (NY)
Moakley
Molinari
Mollohan
Montgomery
Moore
Moorhead
Morrison
Mottl
Murphy
Murtha
Myers
Napier
Natcher
Neal
Nelligan
Nichols
Nowak
O'Brien
Oakar
Oberstar
Oxley
Panetta
Parris
Pashayan
Patterson
Pease
Perkins
Peyser
Pickle
Porter
Price
Rahall
Railsback
Rangel
Ratchford
Regula
Rinaldo
Ritter
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rosenthal
Rostenkowski
Roth
Roukema
Roybal
Rudd
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Schumer
Seiberling
Sensenbrenner
Shamansky
Shannon
Sharp
Shaw
Shelby
Shumway
Shuster
Siljander
Simon
Smith (AL)
Smith (IA)
Smith (NJ)
Smith (OR)
Snyder
Solarz
Solomon
St Germain
Stangeland
Stanton
Stark
Staton
Stenholm
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauzin
Taylor
Thomas
Traxler
Trible
Udall
Vander Jagt
Vento
Walgren
Wampler
Washington
Weaver
Weber (MN)
Weber (OH)
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Yates
Yatron
Young (FL)
Young (MO)
Zablocki
Zeferetti

NOES—33

Archer
Badham
Bereuter
Coats
Daub
Dorgan
Dreier
Evans (IA)
Gonzales
Hall, Ralph
Hall, Sam
Kazen
Kindness
Leath
Loeffler
McCurdy
Miller (CA)
Obey
Patman
Petri
Roberts (KS)
Roberts (SD)
Rousselot
Skeen
Skelton
Smith (NE)
Snowe
Spence
Tauke
Walker
Watkins
Waxman
Wylie

ANSWERED "PRESENT"—1

Ottinger

NOT VOTING—64

Addabbo
Applegate
AuCoin
Barnard
Bedell
Benedict
Biaggi
Bolling
Bowen
Breaux
Chisholm
Clay
Conyers
Courter
Craig
Deckard
Dixon
Dornan
Dougherty
Dowdy
Duncan
Dymally
Erdahl
Fascell
Florio
Garcia
Gaydos
Glickman
Goldwater
Goodling
Grisham
Hagedorn
Hance
Heckler
Hollenbeck
Ireland
Jones (NC)
Long (LA)
Marks
Martin (NY)
Matsui
Mattox
Mavroules
McCloskey
McDonald
McHugh
McKinney
Mitchell (MD)
Moffett
Nelson
Paul
Pepper
Pritchard
Pursell
Quillen
Reuss
Rhodes
Richmond
Savage
Schneider
Smith (PA)
Volkmer
Wilson
Young (AK)

□ 1315

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3663, with Mr. Patterson in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California (Mr. Anderson) will be recognized for 30 minutes, and the gentleman from Pennsylvania (Mr. Shuster) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. Anderson).

(Mr. ANDERSON asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON. I thank the Chairman.

I first yield such time as he may consume to the distinguished chairman of our full Committee on Public Works and Transportation, the gentleman from New Jersey (Mr. Howard).

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Chairman, I rise in support of H.R. 3663. The Bus Regulatory Reform Act of 1981, the bill is yet another effort by the committee to lessen Government regulation in the transportation marketplace, the bill is the product of long and hard work by the committee, expecially by the subcommittee chairman. Glenn Anderson, and the ranking minority leader of the subcommittee, Bud Shuster.

This bill, as previous regulatory bills, is regulatory reform and not total deregulation. This result was thought to be the best approach. It is an approach reached after extensive and open meetings with many groups of interested persons. H.R. 3663 balances the interests of all parties, with the intent of the bill, which is to maintain and to improve transportation and to oversee closely that this intent bears fruition.

The bill permits freer entry for those who wish to participate in this marketplace by substantially reducing Federal entry requirements. Simultaneously, it permits the participants to augment their intrastate services where State regulation has prohibited them from fully utilizing their resources.

Conversely, it permits them to abandon segments of their operations unless such actions are not consistent with the public interest or such abandonment is not an undue burden on interstate commerce. The ICC is to oversee these processes in a manner that requires that agency to examine the effects on service to small communities and commuter services.

Under the act, pricing will be freer; yet, antitrust immunity for collective ratemaking is narrowed.

Under the act, more emphasis will be placed upon safety by requiring minimum insurance levels and by giving the ICC more clout in suspending unsafe operations.

Other provisions of the bill give the carriers opportunities to better utilize their equipment in a manner that should be beneficial to the public.

Some comment has been made about the intent of the amendment to section 10922(e)(4) of Title 49 of the United States Code contained in section 6 of the bill. That amendment directs the ICC to grant carriers authority to transport newspapers, baggage, and mail in the same vehicle with the passengers. It gives the same directive with respect to express. There, however, it permits the ICC to deny authority if, on the basis of evidence presented by objecting persons, it finds that it is not consistent with the public interest. Here, it should be noted that this will probably occur only in the most unusual circumstances.

Apparently, this type of authority is now granted in almost every, if not every, case. This language is not to authorize any contrary policy or any change in that policy. Quite to the contrary, it is assumed that this type of authority will be granted except in the most unusual circumstances. The purpose of the change is solely to preserve some of the ICC's discretion where the ICC finds a clear and convincing reason for denying or limiting that portion of the application seeking authority to transport express.

The bill represents a compromise position, yet it is a balanced compromise, one that should benefit the industry and the traveling public it serves.

Mr. Chairman, I believe this is an important piece of legislation that should be considered by the House.

At this time, I wish to thank all the members of the committee, especially Mr. ANDERSON and Mr. SHUSTER, for their hard work on this bill.

Mr. ANDERSON. Mr. Chairman, as you know, the House Public Works and Transportation Committee has been trying, for the past several years, to promote flexibility in the regulatory structure surrounding the Nation's transportation industries. This has been done, and is continuing to be done, with a spirit of bipartisan cooperation.

The Bus Regulatory Reform Act is a natural extension of our efforts. But it is not an effort which we undertook lightly. When we entered into our hearing process this spring, I, for one, was not certain I would want to pursue the matter legislatively. By the time our hearings were concluded, I was certain beyond any doubt. During our hearings, we heard numerous horror stories. We heard of bus companies who were forced to operate on routes for total revenues which only covered half the route's costs. We heard of bus carriers going through large cities which were not permitted to open their doors in those cities, thus inhibiting their efficient operations and effectively eliminating competition to the other operator who was enjoying a monopoly on the route. We saw that carriers received immunity from the Nation's antitrust laws in collectively determining their own single-line rates.

We saw problems which we thought—and think—can be corrected.

H.R. 3663 sets out to do this. The bill establishes a new regulatory scheme forthe intercity bus industry. The major thrust of the bill deals with reform at the Federal level, however, it does provide an opportunity for Federal oversight of some actions by States that affect interstate carriers.

First, at the Federal level, the bill provides significantly easier entry standards for all types of interstate operations. Section 6 provides for a public interest test for all applicants seeking to operate as common carriers. Under the new test, an applicant must prove that it is fit, willing, and able to conduct the proposed operation. Some protection for regular route operators is provided under new subsection 10922(c)(3), where issuance of a certificate would substantially impair the existing carrier's ability to provide service over its system of routes. Entry for contract carriers and brokers is reduced to a fit, willing and able standard in sections 13 and 14, respectively.

Regulatory controls for interstate rates are substantialy reduced by providing for a zone of rate freedom in section 11 and by substantially lessening regulatory controls for charter service and special operations in section 12. The Interstate Commerce Commission retains authority to correct discriminatory rates or predatory practices.

Antitrust immunity for collective ratemaking will be narrowed by the provisions in section 10. Moreover, that section requires the Motor Carrier Rate Bureau Study Commission to issue a separate report on the bus industry.

The bill also provides for better utilization of equipment with the objective of providing better service to the traveling public. This is accomplished first, in section 7 by providing a mechanism for removal of restrictions in operating authorities, second, in section 8 by allowing the carriers to mix types of passengers, and third, in section 15 by allowing carriers to provide experimental service on a temporary basis.

Other sections of the bill attempt to improve safety and to curtail illegal operations. For example, the ICC can more easily suspend operating authority for unsafe practices that threaten life or property, section 22. Interstate carriers will have to maintain adequate insurance, section 18. Illegal operators will be subject to larger civil penalties, section 23. A thorough review will be made, and rulemaking entered into, of whether or not the use of citizen band radios enhances public safety, section 25.

In an attempt to discourage State practices that burden interstate carriers and thus interstate commerce, the bill allows interstate carriers to eliminate State closed door policies on their interstate routes and to exit and reduce service on intrastate segments of their interstate routes on a case-by-case basis at the ICC. Relief must be in the public interest and must be consistent with not burdening interstate commerce. These reforms are achieved in section 6 and section 16.

Closed door intrastate restrictions on interstate routes are presumed to be unreasonable burdens on interstate commerce and not in the public interest. However, protestants, including the States, are given an opportunity to rebut this presumption before the ICC. Protestants in such cases have the same burden of showing that an intrastate entry application before the ICC is inconsistent with the public interest that they would have in an interstate case. Moreover, the ICC shall consider such intrastate applications in the context of the underlying interstate service being performed and shall consider the same factors in reaching its decision, as it would in an interstate application case.

Protestants also have the opportunity to rebut the presumption that intrastate operating authority limitations on interstate routes are unreasonable burdens on commerce. In the case of intrastate entry preemption, the arguments of the protestant would have to be compelling given the policies favoring increased competition and improved operational and energy efficiency, which strongly favor the lifting of intrastate closed door restrictions on interstate routes.

If a carrier has been granted authority to discontinue its interstate operations, State denials of the carrier's application to discontinue its intrastate service over the same route are presumed to be unreasonable burdens on interstate commerce and not in the public interest. However, protestants, including the States, are given an opportunity to rebut this presumption before the ICC. In reaching a decision in these cases, the ICC must consider the national transportation policy, whether a carrier is receiving financial assistance, whether the service to be discontinued is the last service to the area, and whether the request will have adverse effects on commuter operations, when a protestant raises these issues. These factors or others may create situations where the withholding of authorization to discontinue intrastate operations is found to be consistent with the public interest or not an unreasonable burden on interstate commerce even though authority to discontinue the corresponding interstate operations has been granted.

The committee does not expect the Commission to implement exit policies which differ from the policies established under the relaxed entry requirements of new subsection 10922(c) of title 49, United States Code. It is the strong belief of the committee that simple equity requires carriers to be treated comparably under the entry and exit provisions of the act given the close relationship of these provisions.

Consistent with the policy is the policy in section 17, which permits relief from State actions dealing with intrastate rates of interstate carriers where the State action discriminates against or unduly burdens interstate commerce. Again, the ICC is the agency to which the carriers can appeal for relief.

The legislation contains a limited employee protection section which should help benefit many of those employees—and we believe they will be few in number—who are dislocated because of exit or reduction in service provisions.

Finally, the bill gives special consideration to small communities service and commuter services. They are singled out for special consideration in the provisions of the bill dealing with entry, exit, reduction in service, and removal of operating restrictions. The overall intent is to maintain and to improve these types of service.

Other provisions of the bill provide: First, for a study on all aspects of bus terminals; second, for faster or less regulatory controls over mergers and securities, section 19 and 21; third, for administrative assistance to small carriers and local governments which might become involved in proceedings involving the new procedures established for limited State preemption, section 24; and fourth, addresses a serious problem regarding foreign reciprocity of motor carriers operating rights.

Section 6 and 13 of the bill address the granting of U.S. operating rights to Mexican and Canadian motor common carriers, and contract carriers, respectively.

This section is intended to deal with motor common carriers domiciled in Canada or Mexico, or which are owned or controlled by persons domiciled in those two countries, which seek operating authority from the ICC. Because of differences between those countries, the language speaks of political subdivisions—that is, the Canadian provinces or the Mexican States.

Under the Motor Carrier Act of 1980, of course, we considerably eased entry standards by which motor carriers of freight could enter the industry or expand their operations. It was not intended, or indeed even considered, at that time, that foreign carriers might be applying to the ICC under this easier entry.

It is apparent, though, that foreign carriers ought not be permitted to avail themselves of entry into our country on the same basis as which our own carriers enter in those cases when our carriers are either prohibited by their govenments from entering their markets, or are treated differently from those governments' carriers.

It is not the intention of these provisions to stop the free movement of international commerce. It is, however, clearly our intention to make certain that our operators can take advantage of that commerce.

While I do believe that the ICC currently possesses the authority to turn down applications for operating authority filed by foreign carriers, this provision serves to make clear that if foreign carriers wish to be treated in the United States the same as our domestic carriers, then our carriers must be treated the same in their home country, or, where applicable, their home province or political subdivision.

We have been concerned that, in the case of one nation in which the economic regulation of the motor carrier industry is largely addressed at the provincial level, there exists nonetheless a national authority which may review provincial grants of operating authority to U.S. carriers under the aegis of examining foreign investments in that country. Clearly, this is a process in which U.S. carriers are treated differently from that nation's carriers.

The fact that a U.S. carrier may be granted authority in a foreign nation following a process which is different than the process which that nation's carriers are granted authority, does not necessarily mean that the U.S. carrier is not treated as favorably as the nation's own carriers.

The ICC should certainly consider, though, whether the different process by which a U.S. carrier is granted operating rights is an onerous one, or tends in and of itself to be prohibitive. Of course, should the different process result in unfavorable treatment vis-a-vis the nation or province's own carriers, the ICC, at its discretion, is directed to deny issuance of a certificate to that nation's or province's carriers.

Finally, in determining whether "persons from the United States are not treated as favorably as persons from such political subdivision or country," the Commission should consider constraints on the operation of U.S. motor carriers not shared by the motor carriers of such political subdivision or country, apart from the subdivision or country's granting of operating rights. Conditions or circumstances that are imposed upon U.S. carriers operating in a foreign nation or political subdivision which are not imposed on operators native to that land should also be considered.

Mr. Speaker, it has come to my attention that the California Department of Transportation is undertaking a statewide study of intercity bus transportation. They are doing this to try to identify problems that may occur due to intercity bus reform at the State and/or Federal level.

The State of California is attempting to determine which of its communities require continued bus service even if it is necessary for the State or local government to subsidize it.

Since this legislation provides for the possibility of preemption of State regulation regarding discontinuance of routes, the State of California is concerned that not enough time will be provided for them to develop alternatives and/or subsidies to continue desirable service that may be eliminated.

It is the intention of this committee that every consideration be given by the ICC to States that are trying to develop methods to continue desirable service that may otherwise be eliminated.

Our intent in drafting this legislation, Mr. Speaker, was to reduce the maze of regulations surrounding the intercity bus industry, thus restoring competition in the marketplace. H.R. 3663, before us, will allow us to meet this objective. With its enactment, we will be giving the American free enterprise system an opportunity to work. I strongly urge its passage.

□ 1330

Mr. SHUSTER. Mr. Chairman, I yield 8 minutes to the distinguished ranking minority member of the full committee, the gentleman from California (Mr. CLAUSEN).

(Mr. CLAUSEN asked and was given permission to revise and extend his remarks.)

Mr. CLAUSEN. Mr. Chairman, I rise in support of H.R. 3663, the Bus Regulatory Reform Act of 1981. H.R. 3663 represents, in my judgment, a carefully constructed approach to a very difficult regulatory reform problem. It is the product of countless hours of Member negotiation, as well as constructive participation by all people affected by the intercity bus industry. I wish to commend the chairman of the Committee on Public Works and Transportation, Mr. HOWARD, the chairman of the Subcommittee on Surface Transportation, Mr. ANDERSON, and the subcommittee ranking member, my colleague from Pennsylvania, Mr. SHUSTER, for bringing us to the point where we can proceed with the final piece of regulatory reform legislation designed to modernize our Nation's transportation industry.

I believe the compromise bill before us today is a responsible effort that meshes both the philosophy of deregulation with the practicalities with the Federal-State climate in which the intercity bus industry has developed during the past half century. Our legislation recognizes that even though the intercity bus industry has shared a common regulatory framework with motor carriers of property since 1935, the structure of the two industries is considerably different. The intercity bus industry is dominated by its two largest firms which account for more than 80 percent of the intercity industry revenues. No sector of the trucking industry is as concentrated. In addition, the bus industry differs from the trucking industry in terms of the competitive environment in which it operates. Although the trucking industry faces competition on many fronts, it has enlarged and continues to enlarge its share of the intercity freight market. The bus industry, however, has lost market share over the years, particularly in the last 10 years because of strong intermodal competition, especially from the automobile. Buses also compete with the airlines, while trucks have less airline competition. For this reason, buses were not included in the motor carrier regulatory reform legislation enacted in the last Congress.

At the outset, I would like to address the issue of small community service. I know that a number of Members are concerned that bus companies may eliminate a great deal of service to small communities and rural areas. I want to assure these Members that the committee bill addresses this problem and builds in a number of important safeguards for small communities.

I would like to take a few moments to address the small community issue in detail and to, hopefully, allay the fears of the Members.

First, the exit provisions (section 16) of the bill are far from automatic, and are not a sure out. A carrier can be turned down for either of two reasons. It can be turned down if the State or other protestant shows that abandoning the service is not consistent with the public interest; or continuing the transportation is not an unreasonable burden on interstate commerce.

Second, in making its decision on whether to preempt the State, the ICC must consider: whether the transportation is the last bus service to a community; and whether a reasonable alternative to such service is available.

Third, the exit provisions of the bill recognize the legitimate and useful role for State and local governments to play when a community is threatened with loss of service, a role which calls on their particular knowledge and experience with local conditions. The carrier must apply to the State first, and the State has 120 days in which to act. The carrier must notify the State and affected communities if it appeals the State's decision to the ICC. The State and local governments can argue their case before the ICC. Exit is not automatic. The ICC can require the carrier to continue the service for up to 180 days from the time the appeal is filed in order to allow State or local groups to make alternative arrangements to insure that service is not abandoned. Thus, there will be up to 300 days notice to the State and local communities of the possible abandonment of the service. This should be enough time to make alternative arrangements. And even then, the ICC may have turned the carrier down. Section 24 allows the ICC to provide administrative assistance to local governments in preemption cases.

Fourth, the limited, case-by-case preemption in H.R. 3663 falls far short of the extensive preemption that Congress approved for airlines and railroads in the Airline Deregulation Act, the Staggers Rail Act.

Fifth, the limited, case-by-case preemption in H.R. 3663 does not go as far as most witnesses that appeared before the committee wanted. Industry, obviously, wanted total preemption. They argued for a guaranteed right of exit. The ICC testified in favor of automatic exit. The Transportation Consumer Action Project (representing 15 consumer groups) testified in favor of extensive Federal preemption along the lines of the provision in the Airline Deregulation Act. The Reagan administration (DOT and Justice) recognized the need for Federal preemption. Justice stated:

> Intercity bus transportation is a line of commerce where substantial Federal preemption would be appropriate.

Sixth, the Transportation Consumer Action Project and Congress Watch support the bill.

Seventh, the committee anticipates that other provisions of the bill which encourage market and service experimentation will improve service to small communities and rural areas. The relaxed entry standards in section 6 will make it easier for new companies to get into the business and for existing companies to expand their operation. In entry cases, the ICC must give special consideration to proposals that will improve small community service. The restriction removal section of the bill (section 7) will give existing carriers greater flexibility in serving intermediate and off-route points. Carriers will be given greater flexibility in using their vehicles, for example, they will be allowed to mix regular route and charter passengers. There are streamlined entry provisions (fitness only) for carriers who want to serve communities not regularly served and communities which are losing bus service as a result of the exit provisions of the act. Greater rate flexibility will allow carriers to turn some unprofitable routes into profitable ones, thereby eliminating the need for abandonment. Section 15 of the bill will allow carriers to quickly experiment with new service and, thus, serve the public's need.

Eighth, it is important to recognize that the intercity bus industry is part of a national transportation system and to the degree it is regulated, it should be treated as such. Such a notion was inherent in the recent Supreme Court decision which struck down as a burden on interstate commerce an Iowa law which limited twin trailers in that State, even though all surrounding States permitted the larger trucks to operate. An emphasis on the national transportation system and the need for uniformity must guide Congress in this area as well. Otherwise, transportation service becomes balkanized, with States controlling intrastate routes and rates according to their own standards, for example, refusing to let interstate carriers transport intrastate passengers, and retaining a veto over a carrier's leaving a particular market.

Ninth, the exit provisions must be viewed in light of the historically declining financial position of the bus industry. Many interstate bus companies, including the two largest, operate at discouragingly low profit levels, making the future of interstate bus service a questionable enterprise. We simply cannot afford to continue the practice of forcing bus companies to provide too much service with larger than necessary vehicles on little-traveled routes.

Tenth, if we are serious about reducing government regulation of American business, then we must stop requiring a carrier to continue operating over certain routes regardless of whether such service is in its business interest. In effect, Congress must put up or shut up.

Eleventh, the less service argument has not been proven true by the intrastate deregulation experience of Florida. On the whole, bus service in Florida has improved, including service to small communities.

Twelfth, currently, bus companies are at the mercy of unrealistically low intrastate fares. The bill provides a procedure for raising intrastate rates to a more reasonable level. This should turn many unprofitable routes to profitable ones, thereby obviating the need for a carrier to abandon the route.

Thirteenth, while restrictive State exit policies may be convenient for some passengers, other riders (normally interstate passengers) end up subsidizing the uneconomical service with higher ticket prices. It is unfair to allow this type of cross-subsidization to continue on a large scale.

Fourteenth, unfortunately, some smaller communities with few passengers may initially lose their bus service, but hopefully new entrants will step in or more efficient bus service would be available only a short distance away.

Fifteenth, we don't expect the exit problems from this bill to be anywhere near as severe as they were under the Airline Deregulation Act. The cost to start up a new bus service is much less than the cost to start up a commuter airline.

Sixteenth, the bill contains a mandatory oversight provision requiring annual oversight until 1965. The committee will be looking for problems, especially with respect to small community service.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. CLAUSEN. I will be happy to yield.

Mr. KAZEN. Mr. Chairman, I appreciate what the gentleman is saying, and since this bill was just printed this morning and I did not know what is in it, I have been trying to decipher this thing.

On the fact that there is no automatic exit, my understanding is that ICC argued before the committee for an automatic exit; am I correct?

Mr. CLAUSEN. The answer to that is a qualified yes. The ICC has been in the process of attempting to implement this administratively, and as a consequence the committee decided on its own that they ought to be holding the hearings. I will yield to the gentleman from Pennsylvania, the ranking minority member on the subcommittee, to expand on the gentleman's question.

Mr. KAZEN. The only reason I asked that question is because I have got a synopsis of the bill before me, and it says,

> The limited, case-by-case preemption in H.R. 3663 does not go as far as most witnesses that apeared before the Committee wanted.
>
> A. Industry, obviously, wanted total preemption. They argued for a guaranteed right of exit.
>
> B. The ICC testified in favor of automatic exit.

Mr. CLAUSEN. That is correct.

Mr. KAZEN. So, you know, two strikes against the States when they come up on appeal arguing against exit if the ICC has already made up its mind and has argued and has the position that they favor automatic exit. It creates a doubt in my mind as to whether or not, whether we say it in law or not, whether the ICC will kind of lean toward their position because they have made their position known.

Mr. CLAUSEN. But by the same token, the committee went into depth to make certain that the States and the local government have input to counter any presumption favoring Federal preemption to insure that local interests are in fact protected.

Mr. KAZEN. I thank the gentleman.

Mr. ANDERSON. Mr. Chairman, will the gentleman yield?

Mr. CLAUSEN. I will be happy to yield.

Mr. ANDERSON. Was not the ICC recommendation rejected by our committee. And did not we in a sense, adopt something which will now be the law, and which the ICC then, will have to administer, when carrying out the law?

Mr. CLAUSEN. The gentleman is correct, and I concur in his comment.

In addressing the issue of regulatory reform of motor carriers of passengers, our intent has been to modernize the economic regulation of the intercity bus industry in order to enhance new competition. Our effort has been directed to encourage new entrants into the bus industry, while insuring that the industry does not become the exclusive domain of two giants. We have, therefore, revised the public convenience and necessity requirement of new applicants so that new applications will be granted unless the Interstate Commerce Commission finds on the basis of any evidence presented by any protestant that the transportation to be provided would be inconsistent with the public interest. This revised test should insure more competition and still protect small carriers from being competed out of existence. This new entry test will be somewhat easier for bus operators than for motor common carriers of property under the Motor Carrier Act of 1980. For one thing, the formal need test will be eliminated. Further, the revised public convenience and necessity test is much more analogous to a public interest test. This is consistent with the hearings conducted by the Committee on Public Works and Transportation which demonstrated that certain characteristics of the intercity bus industry are different from the overall motor carrier industry and need to be addressed separately from trucks and in a slightly different manner.

In order to promote a more competitive and efficient intercity bus industry, it is the intention of this bill to prohibit closed door intrastate restrictions by the States which apply to carriers operating under interstate certificates and to remove unnecessarily narrow restrictions from the operating certificates of interstate carriers. If a carrier has interstate authority and wishes to provide intrastate service along the same route, he will be able, under section 6 of this act, to seek ultimate recourse from the Interstate Commerce Commission if a State unreasonably denies his request to provide the service or if that State unreasonably delays making a decision on his request. If the route is strictly interstate, however, and merely requires the Interstate Commerce Commission removing an intermediate interstate point restriction, the restriction removal provisions under section 7 of this bill will apply. Both of these provisions are intended to maximize bus use along particular routes.

Other provisions aimed at maximizing utilization of buses are also included in this bill. For example, carriers could serve regular route and charter passengers in the same vehicle and at the same time. They would also be allowed to transport up to three groups of interstate charter passengers in the same motor vheicle and at the same time.

We are including a zone of rate freedom for carriers of passengers similar to the zone of rate freedom included in the Motor Carrier Act of 1980. Under the provisions of this bill, a carrier could increase its prices by 10 percent and reduce them by 20 percent in any given year without ICC approval. The Commission could increase the zone upward by 10 percent on an annual basis if it found that there was adequate competiton in the bus industry or that the increase was necessary to take into account the impact of inflation. Both single and joint line rate changes could be made through the zone of rate freedom. In addition, the bill formalizes the rule of ratemaking which must be considered by the ICC in proceedings to determine the reasonableness of passenger carrier rate levels. The objective of the rule would be to compel the Commission to authorize revenue levels for passenger carriers that are adequate to allow well-managed carriers to cover their costs and to earn a fair return. It is our hope that through the implementation of the rule of ratemaking, significant capital formation will occur in the intercity bus industry.

Consistent with the rate changes is the eventual withdrawal of antitrust immunity for voting upon or discussion of single line rates by January 1, 1984. Up to the 1984 date, only carriers who participate in the rates would be free to discuss them in rate bureau deliberations.

We have eased the entry requirements for charter operators and have removed the round trip requirement for charter operators who interface with other modal carriers. Likewise, under the restriction removal procedures, the limitation of one-way authority has been removed to promote round trip authority for regular route and special operators.

We have given special emphasis to the impact of intercity bus regulatory reform on small communities who depend on bus transportation as their only link of intercity passenger transportation. Many of us recall the difficulties some small communities have faced during the early years of airline deregulation. Our intention is to minimize similar disruptions from occurring with the modernization of intercity bus regulation. We have addressed this problem in two ways. First, we have eased entry requirements for those communities which lose bus service or transportation from other modes. Second, we are instituting exit procedures intended both to encourage new entrants into the market and to try and maintain an adequate service level for our small communities.

We are also giving special consideration to meshing our regulatory reform of the intercity bus industry with other Government programs which have been used over the past decade to encourage both public and private commuter operations. The commuter bus industry is given special status within this bill and certain rights to protest competition from new entrants which may have an adverse impact on their operations. It is presumed that the commuter operations presently being provided are in the public interest. Every reasonable effort should be made to insure that new entrants do not come in to skim off the profitable portions of commuter operations, thus causing greater subsidies by State or local government.

Finally, through this legislation we hope to clarify and simplify the Federal-State relationship with regard to regulation of the intercity bus industry. During the past 30 years, the bus industry has been transformed from one enjoying relative financial prosperity to an industry currently best described as financially weak. Thirty years ago, regular route service was the principal source of revenues for this industry. Today, more than 50 percent of the total intercity bus passenger traffic revenues come from special operations and charter service. Earnings of the intercity bus industry peaked out in 1971. At that time, the operating ratio in the industry was below 90 percent. Today, the operating ratio exceeds 95 percent. And, of course, the higher the operating ratio, the less profitable the activity. Although several factors can be viewed as contributors to the poor performance in operating ratio, a strong argument can be made that a contributing factor has been the current regulatory framework in which they operate.

However, the industry's total reliance on the marketplace would be somewhat paradoxical. Many of the proponents of total deregulation are also strict adherents to the philosophy of State's rights. Carried to its logical extreme, however, total deregulation without total preemption of State law would lead to an unregulated interstate system and a patchwork form of regulation with each of the 50 States having their own regulatory schemes for intrastate traffic. Through this legislation, we have developed what I believe is a very reasonable approach retaining the minimum form of Federal regulation necessary and a minimum level of preemption of State authority in three areas: entry; exit; and rates. The two-tiered approach used in this legislation regarding areas previously controlled by the States still gives the States the first bite of the apple. We strongly believe that this two-tiered approach will lead to more efficient regulation by both the State and the Federal Government. And that efficiency is consistent with our national transportation policy.

It is my belief that the reforms contained in this legislation will introduce the benefits of competition to the intercity bus market and help reduce the cost of intercity bus operations by simplifying the regulatory process. At the same time, the balanced approach contained in H.R. 3663 will insure that bus transportation, which in many cases is the only available, affordable means of intercity transportation for people who are either too young, too old or too poor to drive an automobile, remains in existence. For many years, we as a nation have been able to afford the luxury of running a transportation system at less than its maximum efficiency. But those days are gone. As we prepare for the entry into a new century, we have to make sure that our regulatory systems contribute, rather than hinder, our national objectives. H.R. 3663, the Bus Regulatory Reform Act of 1981, is one part of that effort. I urge my colleagues to join with me in voting for its adoption.

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think the basic questions are: What is the point of this legislation? What is the purpose? What is the intent?

The purpose and the intent is to bring about increased competition in the intercity bus industry, and thereby do at least two things; first, increase the service to the consumers of this particular transportation service, and second, to assure a healthy intercity bus industry which is capable of serving the people of this Nation.

It is no secret that the intercity bus industry has not been among the more healthy industries in America. It is no secret that their return on investment has been inadequate, and it has been very difficult in many respects for them to grow and provide the flexibility, the growth necessary to provide the services to the people across America.

So, this legislation does several things aiming in the direction of improving service and providing a healthy industry capable of providing that service. It eases the entry so that more competition can get into this particular business.

Now, we cannot have it both ways. If we say on the one hand that we want to open it up, ease the entry, let more competition come in and compete for the business available, we cannot then turn around and say, however, we are going to make it impossible for the industry to get out of providing services no matter what, even if the demand is not there, regardless of the cost, regardless of the losses. We are going to say on the one hand, "You can compete," but on the other hand, "You have got to stay forever, once you have a route."

That simply does not make sense. That is not equity, and we have got to provide at least in a guarded way for the industry to be able to come forth and present its case and show where it is not in the public interest that a service be provided. It is only in that sense that the so-called exit provision is provided in this legislation.

This is not deregulation. In fact, it is a misnomer that I think perhaps many of us are guilty of when we talk about bus deregulation. This is a far cry from deregulation. In fact, this is a far cry from the extent to which Federal preemption was provided in the airline regulatory reform bill.

□ 1345

My colleagues have already outlined the steps which must be taken by a bus company before it can exit a particular route on which it has provided service. I think the points previously made deserve to be reinforced. A carrier must go to his State and present the case for giving up a route. The carrier then can appeal to the ICC, but the law is very clear that the ICC can require the carrier to continue the service for up to 180 days from the time of the appeal, and indeed the service will be required to be continued if it is shown by a protestant that it is not consistent with the public interest to abandon service, or, that requiring continuing of the transportation would not constitute an unreasonable burden on interstate commerce.

So this is not a blank check. This is not a free ride. There are very clear and compelling requirements which must be met before a bus company can exit a particular route.

Last, Mr. Chairman, I think it is important to focus on the testimony our committee had with regard to the experience in the State of Florida. The State of Florida went far beyond what we are proposing in this legislation today. Indeed, they did enact deregulation of the instrastate bus industry, and the experience there was very positive. The experience there, according to the testimony before our committee—by State legislators, I might add—was that it did improve service, and that it did increase competition. It made it possible, where, for example, large buses were uneconomical and the large bus companies wanted to get out of service, that instead smaller companies were able to move in with smaller buses and many more buses and provide better service.

So I think the experience in Florida is very significant, and indeed I emphasize that they went far beyond what we are trying to do in this bill today.

This is simply a modest step in the direction of letting the marketplace work; this is not complete deregulation by a far stretch.

I believe we should support this bill if indeed we believe that there should be restraint exercised on the part of Government regulation. If we really believe there should be less Government regulation, then we should support this bill. If, on the other hand, we believe that the heavy hand of the Federal Government should continue to regulate and overregulate, then we should oppose this bill.

If you are against the free market system, if you are against competition working, if you are against freedom in setting rates—at least within reasonable zones of rate-setting—then oppose this bill. But if you want to see the marketplace have a greater chance to work, then support this bill, recognizing that there are very substantial restraints and constraints, particularly in the area of a bus company being able to get out of providing service. In that situation, the case must be made first at the State level and then at the Federal level.

So, Mr. Chairman, I urge support of this legislation.

Mr. ANDERSON. Mr. Chairman, I yield 6 minutes to the gentleman from West Virginia (Mr. RAHALL) for a colloquy.

(Mr. RAHALL asked and was given permission to revise and extend his remarks.)

Mr. RAHALL. Mr. Chairman, when this body first considered airline deregulation, I opposed the initial effort until I thought an effective compromise was reached that took into consideration the effects of airline deregulation on the small communities across our country.

When trucking deregulation approached this body, I had much of the same concerns about its effect on small communities.

So it was, therefore, with a little bit of queasiness that I first approached bus deregulation as it came before our Committee on Public Works and Transportation.

West Virginia and many rural parts of our Nation have indeed been impacted by airline deregulation, trucking deregulation, or loss of train service through elimination of many Amtrak routes, and in many parts of this country roads are very difficult and very expensive, if not downright impossible to build.

So for much of rural America the bus company is the only game in town. For many of our 14,000 small towns across America, this is the only game left in town.

I was initially queasy about this legislation because I felt it might result in diminished, if not zero, bus service at increased rates for rural America. But much of this queasiness has been dispelled because of my further examination of the legislation.

I might also add, Mr. Chairman, that aside from being the only game in town, the bus terminal in many small cities across America is the only place in town to drink coffee and eat food and settle the queasy stomach with coffee and scrambled eggs at all hours of the night and early in the morning.

This queasiness that I felt has subsided because there are in my opinion adequate assurances in this bill that the effects on small rural communities across America will be taken into account before buses are allowed to enter or exit certain markets.

I would like to enter into a colloquy with the distinguished chairman of the Subcommittee on Surface Transportation, a member whom I do commend for the efforts and the diligent work he has put forth into this legislation, and I commend as well the distinguished minority member, the gentleman from Pennsylvania (Mr. SHUSTER).

I would like to ask the subcommittee chairman about the concerns that I have in regard to the small communities. I am concerned and many in this House—and I know it has been expressed during debate on the rule—are concerned about the effects on small communities and the impact this regulatory reform bill will have on bus service to smalltowns and communities.

I know, Mr. Chairman, that the Committee on Public Works and Transportation has had this problem at the forefront of its deliberations, and I would hope the gentleman could tell me and my colleagues from rural America what is included in this bill to address these concerns.

Mr. ANDERSON. Mr. Chairman, will the gentleman yield?

Mr. RAHALL. I am glad to yield to the subcommittee chairman.

Mr. ANDERSON Mr. Chairman, I can appreciate the gentleman from West Virginia's concern. The committee has addressed those concerns in the bill.

(1) First, the National Transportation Policy directs the ICC to promote a competitive and efficient bus industry in order to maintain and to provide service to small communities.

(2) The bill provides for freer entry into the marketplace (sec. 6) and for experimental (sec. 15) service to communities not having service.

(3) Entry policies have to take into consideration service to small communities. In other words, entry policies are to have a positive effect for small community service, not a negative one.

(4) In removing any restrictions from interstate operating authorities of the carriers, the effect on small communities must be considered.

(5) In any exit proceeding where the ICC has appellate jurisdiction over an exit request, the ICC must look at the national transportation policy, which I have already indicated contains a requirement to provide and to maintain service to small communities.

Additionally, the ICC must look at whether or not it is the last service to a community, whether it is large or small, and whether or not there is reasonable alternative service. This must be calculated into its decisions as to whether or not exit should be permitted. It was put into the bill to give the ICC specific direction from the Congress as to our concern for the service requirements of small towns and for policy guidance in its public interest determinations.

Mr. RAHALL. Under the entry provisions, there is a specific criteria for the ICC to consider the effect of the issuance of a certificate on small communities. Would it not enhance the exit public interest test by including a similar provision in this bill?

Mr. ANDERSON. Mr. Chairman, the test under exit is somewhat tighter. As I said earlier, the ICC as a policy guideline must look at the national transportation policy. This policy specifically has as a goal the providing and maintaining of service to small communities. That particular goal is set forth in section 10101(a)(7)(E). Therefore, rather than include the same type of provision as in entry, we included a more specific provision. The exit policy requires that in exit, the ICC must determine whether the exit being sought is the last bus and, in addition, whether or not there is a reasonable alternate service. This is a stricter test. I think that the question is addressed in a more direct manner in section 16 and therefore is not needed. It is a policy directive already and the ICC will have to examine that concern. In the mandatory oversight hearings mandated by the bill, the committee will scrutinize the positive or negative effects of this legislation on small communities, and if this provision is not carried out properly, we will be even more specific.

Mr. RAHALL. Mr. Chairman, I do have one last question.

Will the "public interest" criterion contained in the exit provisions of H.R. 3663 carry as much weight with the ICC as economic considerations?

Mr. ANDERSON. Mr. Chairman, the intent of this bill is to insure that the public interest test has an equal emphasis with economic considerations and the ICC interpreting otherwise would be a regulatory charade. The act does not create, and the Public Works and Transportation Committee would not condone, such a charade. In addition, I am certain that will be one of the areas we will be monitoring closely in oversight hearings.

Mr. RAHALL. Mr. Speaker, the State of West Virginia has been hit especially hard over the last couple of years by airline deregulation and recently, the loss of the Cardinal and Shenandoah Amtrak train lines. Since deregulated air service began, West Virginia has experienced a 29-percent decline in daily seat departures, 13-percent decline in daily aircraft departures and a 21-percent decline in daily jet departures. Overall, many small communities in this predominantly rural State have lost air service. This, along with the loss of Amtrak service, has limited the availability of public mass transportation for the people of the State.

With this in mind, I viewed H.R. 3663, the "Bus Regulatory Reform Act of 1981" with a certain amount of trepidation. Of specific concern were the exit provisions of this legislation which preempted the State regulatory agency under certain circumstances. It seemed to me that if the Interstate Commerce Commission, in making an exit decision, did not put enough weight on the public interest test contained in the bill, the bus industry would drop service to many rural areas which by their nature have lower ridership than in more populated regions of the country.

However, after having entered into a colloquy with the distinguished chairman of the Committee on Public Works and Transportation today on this matter, it appears there are reasonable safeguards built into this legislation which protect small communities and rural areas. These safeguards are found in the list of criteria the ICC must consider before acting on an exit application which is the subject of protest by a State. Among these criteria are the national transportation policy of section 10101 of title 49, U.S.C. which makes numerable mentions of the desirability of service to small communities and the criterion that in the case of a petition to discontinue service to any point the Commission must consider whether it is the last service to that point and whether a reasonable alternative is available.

These provisions, which constitute part of the public interest test of this legislation, are most important to the people of West Virginia in light of their limited access to public transportation since airline deregulation and the elimination of Amtrak service. It should be remembered that the people who use intercity bus service the most are the elderly, the very young and the economically disadvantaged. While efforts to free the bus industry from burdensome regulation by placing it within the context of the free market are certainly commendable, it should not be done at the expense of those who depend on this service as their only means of transportation.

I am further assured that service will continue to the small communities of my district through meetings with representatives of Greyhound and Trailways—both of which serve the southern part of West Virginia. According to a letter sent to me by William L. McCracken, senior vice president of Greyhound Lines, Inc., and dated November 17, 1981, "While an absolute guarantee with respect to future service is not possible, we feel very comfortable in assuring you that we have no present plans to change our service nor can we foresee any reason to significantly change that service in the coming years." Among the communities Greyhound serves in my district are Bluefield, Princeton, Beckley, and Huntington with connecting service to Charleston. This service not only allows people to travel within the State, but to points in Kentucky and Virginia.

During a meeting I had with representatives of Trailways yesterday, I was given similar assurances. However, a different situation exists with Trailways. The company has already obtained permission to transfer its lines in southern West Virginia to another carrier with the intention that service continue uninterrupted. The communities now served by Trailways in my district include Huntington, Chapmanville, Logan, Gilbert, Iaeger, Welch, Man, Pineville and Bluefield. Even though service to these communities will be transferred to another carrier, Trailways informs me it will still provide service from Roanoke, Va. to Bluefield, W. Va.

Mr. Chairman, there is one other item which should be addressed at this time. There is a certain degree of discretion given to the ICC in this bill in making exit, entry and rate determinations. As in most laws, while Congress can explain its intent in passing a bill, it is the regulatory body which implements it under its own interpretation. For this reason, while it is the intent of Congress that bus service to small communities be protected under this bill, it is important to know the opinion of those at the ICC who will eventually implement the Act. Fortunately, my fears over the loss of service to these communities have been further put to rest by the remarks of ICC Chairman Reese H. Taylor, Jr., before the Annual Meeting of the American Bus Association on October 28, 1981. According to Chairman Taylor, "Another area of concern should be the continuation of scheduled, regular route service to small or rural communities. We simply must not allow an energy efficient alternative to the private car to vanish from our small or rural communities, particularly when local air and rail passenger service is disappearing to the extent that intercity bus service is the only remaining link with the outside world in many areas. Consequently, reform legislation must contemplate the delicate balancing necessary to preserve scheduled service to small or rural communities."

It would appear Chairman Taylor had southern West Virginia in mind when making that statement, and I commend him for taking such a position.

Mr. SHUSTER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. CLINGER), a member of the committee.

(Mr. CLINGER asked and was given permission to revise and extend his remarks.)

Mr. CLINGER. Mr. Chairman, I thank the gentleman for yielding this time to me for purposes of a colloquy.

I have been impressed by the statements that have been made here that reemphasize the protections that have been built into this bill for rural and small communities. In our close review of these, we find there are many protections, but I think, at the risk of being repetitious, it is important to stress that we have or the committee has been careful to protect those concerns.

I know that some communities have expressed concerns because perhaps unfortunately, with airline deregulation, they have found themselves with less service. I think there are real differences between this bill and the airline deregulation bill.

So I would like to address a few questions to the gentleman from Pennsylvania (Mr. SHUSTER), the ranking minority member. Last year, in the trucking regulatory reform bill, I, along with others, was successful in institution provisions calling for a study, which, by the way, is due September 1 of next year. In that bill and in this legislation I shared the concern of the gentleman from Pennsylvania and others who represent rural areas that regulatory reform does not mean mass abandonment of transportation to and from small towns.

In this legislation it is my understanding we have safeguards which have been mentioned here and which have been inserted directly into the statute to address this concern.

Mr. Chairman, I would ask the gentleman if he would please describe some of those provisions to us.

Mr. SHUSTER. Mr. Chairman, if the gentleman will yield, I would be happy to do that, and I would say to the gentleman that this issue is so important that it does bear emphasis and repeating, in my judgment.

In the national transportation policy it is explicitly—not implicitly, but explicitly—stated that the ICC have as a goal providing and maintaining service to small communities; also that the entry, exit, and regulation removal provisions thereby direct the ICC to consider the effect on small communities.

In regard to H.R. 3663, it provides for a very easy entry test for new service, that is, expanded service to a community that is not regularly served by a motor carrier or where such service is being dropped.

Also section 15 provides that the Commission may grant emergency temporary authority for 210 days, which is longer than the existing law, to a carrier or passengers to a town which is not presently served.

In regard to exit, the bill specifically requires that the ICC shall consider whether a community is losing its last bus service to that particular area.

Mr. Chairman, I believe these specific sections of the legislation very substantially address the concerns expressed by my friend and colleague, the gentleman from Pennsylvania (Mr. CLINGER).

□ 1400

Mr. CLINGER. I appreciate that explanation and agree with the gentleman that these safeguards should be enough.

I would point out that we will in the Public Works and Transportation Committee retain oversight of this bill in the future. I think our record on oversight with regard to truck deregulation and airline deregulation has been exemplary, and I would anticipate if problems do arise with any of these provisions as they relate to small communities, and we do see a diminution of service to the small communities, that through the oversight process, which as I say, we have been diligent at, we would be able to address those problems.

I appreciate the gentleman yielding and thank the gentleman.

Mr. SHUSTER. I thank the gentleman.

Mr. ANDERSON. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

(Mr. ALBOSTA asked and was given permission to revise and extend his remarks.)

Mr. ALBOSTA. Mr. Chairman, I would like to take this opportunity to engage in a brief discussion with the distinguished chairman of the Subcommittee on Surface Transportation, the gentleman from California, on H.R. 3663, the Bus Regulatory Reform Act.

In view of some of the problems that were brought to the Public Works Committee's attention, is it not the intent of the House that safety enforcement be increased as embodied in sections 22 and 23 so that the ICC will be more active in making sure that unsafe buses do not operate on our Nation's highways?

Mr. ANDERSON. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I yield to the gentleman.

Mr. ANDERSON. Yes; that it is the intent of this legislation that we are considering today.

Mr. ALBOSTA. I thank the gentleman and want to commend him for his fine leadership on this important bill.

I also would like to thank the chairman of the full Committee on Public Works and Transportation.

Mr. ANDERSON. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. ECKART).

(Mr. ECKART asked and was given permission to revise and extend his remarks.)

Mr. ECKART. Mr. Chairman, I would first like to commend the committee for bringing this legislation to the floor because I am fully aware of the problem that needs to be addressed by some type of legislation.

However, unlike a number of previous speakers who have stated that this bill is balanced in its approach, I would like to draw several reasons to the Members' attention why I believe that, in fact, this bill bears a little more close scrutiny and perhaps a no vote.

My first reason is that I am deeply concerned about the provisions of the legislation which would allow "creamskimming" to occur over certain transit lines, particularly as it may relate to municipal transit systems. Under this bill charters could operate and remove from the municipal transit systems those most lucrative public routes financed by public taxpayer dollars which really provide the main sustenance for publicly supported mass transit systems in our urban areas. By allowing private companies to come in and to remove the most lucrative of the routes of the public transit system we may, in fact, force on local transit systems tax increases to help make up lost revenue. Coupled with severe Federal budget cuts for urban mass transit systems I am afraid that this bill, if passed, may make it more difficult for public transportation to survive.

I would also draw to the attention of Members, as my second reason, page 38 of the bill. I am deeply concerned, as I have heard many Members speak about the need of getting Government off the backs of the people. But I would draw Members' attention to the language of the bill which says:

> The Commission shall prescribe any rate, rule, or practice applicable to transportation provided entirely in one State.

I submit to the members of the committee today that this is not getting Government off the backs of the people but, in fact, shifts the focus from the locally elected representatives, from the State capital and local public service commissions, to Washington. A shift which runs counter to the philosophy of local control.

I wonder which one of us is prepared to tell the township trustee or the city solicitor that instead of having to go to the State capital to press their cause they now will have to come to Washington to plead their case.

The next reason I would draw to the Members' attention is the impact on America of airline deregulation, truck deregulation, and cutbacks in Amtrak and Conrail which only are going to further exacerbate a difficult transportation system crisis that we already face.

I would draw the Members' attention to pages 58 and 59 of the committee report which shows dramatic fare increases that will result with the passage of this legislation.

Only the biggest will survive as a result of the adoption of this bill. So far all we have talked about is the impact of this bill on bus companies, but who is concerned about the consumer or those who use public transportation. If we really care about reasonable cost public transportation for all people then I urge a no vote.

Mr. SHUSTER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Nebraska (Mrs. SMITH).

(Mrs. SMITH of Nebraska asked and was given permission to revise and extend her remarks.)

Mrs. SMITH of Nebraska. I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition to H.R. 3663. I think this change is too serious to proceed without giving the Congress an opportunity to study. I understand that this report was only printed this morning. The subcommittee reported the bill on Monday; the full committee reported the bill on Tuesday; the Rules Committee reported the bill on Wednesday; and here it is Thursday and we have it up before us for consideration.

I have grave reservations as to whether this whole procedure is going to be good for our country. I think this Congress would better serve our Nation by taking time for the Members to have a chance to study the report and be aware of just what we are doing.

I come from rural America, 62 counties in my district, and 307 towns.

I see that the bill will permit the Interstate Commerce Commission to preempt State decisions on rates and rules. This is an unwise move in the wrong direction. The Nebraska Public Service Commission, which regulates bus transportation in my State, wrote to the Public Works and Transportation Committee when it considered this bill. The Chairman of the Commission stated that this provision allowing ICC preemption would restrict citizen imput on rate and route changes and would not be in the best interest of the public. The State regulatory commissions have the best interest of the traveling public in mind, he wrote, and the decisions of the Public Service Commission are subject to review by the Supreme Court of Nebraska. The Chairman further told the Committee that his Commission had never turned down a rate increase proposed by a busline. He knows that bus companies need to make a profit if they are to continue to serve our area. In addition, he pointed out that this legislation would create an imbalance between State and Federal regulatory interests.

If airline deregulation is the model for this legislation, then rural Nebraska has nothing to hope for in terms of adequate and reasonably priced transportation.

Already, certain bus lines that have served my State in the past are abandoning service to small communities. In most cases, these bus companies were the sole source of public transportation.

One bus line has abandoned service from Ogallala, Nebr., though Lodgepole, Chappell, Big Springs, and Kimball, to Cheyenne, Wyo. Even though they have already stopped providing service, a public hearing will not be held on this until December of this year. This action is against the law. I make this point to show how eager these bus companies are to abandon service to small communities and to show how inadequate the so-called protection for small communities provisions in this bill will be if they ever become law.

Too many people in this Nation, especially in rural areas that are isolated from big population centers and small towns between major population centers, rely on a well-regulated bus transportation system. Most of these people, by the way, are senior citizens living on fixed incomes and others unable to pay the high cost of airline travel.

Mr. Chairman, let us not leave the people of rural America in the lurch with regard to transportation I urge defeat of this ill-conceived, hastily considered legislation.

Mr. KAZEN. Mr. Chairman, will the gentlewoman yield?

Mrs. SMITH of Nebraska. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentlewoman for yielding. I want to associate myself with the gentlewoman's remarks. This is the reason that I asked for a vote on the rule and a vote on going into the committee, to give us enough time to see what provisions this bill makes, for us to be able to study it, and to intelligently vote on it.

This is one of the reasons that I am inclined to vote against this bill, simply because I do not know what is in it and how it is going to affect my rural cities.

I agree with the gentlewoman. This bill should have been slowed down a little bit to allow us an opportunity to thoroughly study it and possibly amend it. This way we do not have that opportunity.

Mrs. SMITH of Nebraska. I thank the gentleman. I agree with the gentleman's assessment that we should have delayed this action.

We were assured that rail deregulation was all taken care of with full protection for communities that already had air service. But it has not worked out that way. We have had no end of trouble. We have had hearings. We have had hearings on subsidies. We have small airlines that have gone out of business, they have gone broke. We have had delays in getting answers. We have much poorer service than we did before.

I am now very much afraid that we will have less and less bus service. We do not have air service and we do not have Amtrak. We cannot leave rural America without service.

We have an isolated population. It is composed largely of older people. They depend on a well-regulated bus service.

I think there is real danger to rural America with this procedure, in spite of the efforts that have been made by the committee to take care of what they see as problems. I think we should give it very close scrutiny and, since it is going to be voted on today, I urge a "no" vote.

● Mr. FARY. Mr. Chairman, I request permission to revise and extend my remarks.

Mr. Chairman, I rise in support of H.R. 3663, the Bus Regulatory Reform Act of 1981. This worthwhile legislation has been brought to the floor after many hearings and much work by the distinguished chairman of the Surface Transportation Subcommittee, Congressman GLENN ANDERSON, and the chairman of the full Public Works and Transportation Committee, Congressman JIM HOWARD.

The deregulation of the intercity bus passenger system is the final step in the deregulation of our transportation system in this country. Since coming to Congress in 1975, I have had the privilege of serving on the Public Works Committee. Our committee has passed bills that deregulated the airline and trucking industries. These laws have helped these industries by lessening burdensome Government regulations and allowed them to operate in a competitive and healthy environment. Less regulation has spawned new and improved services for the consumer in both industries.

In addition, H.R. 3663, addresses a pressing problem that is facing the trucking industry. At the present time American trucking companies are being discriminated against in their operations in Canada. They are not granted the same operating authority rights that Canadian trucking firms enjoy. A new subsection in H.R. 3663 will grant the Interstate Commerce Commission the discretion to deny an application of a Mexican or Canadian company if the Commission determines that Mexico or Canada does not treat American companies at least as favorably as it treats its own companies. This provision is needed and fair, since Canadian firms have the privilege of operating unhindered in the United States.●

● Mr. ALBOSTA. Mr. Chairman, as a Member from the State of Michigan, I have becoming increasingly concerned about the problem that American truckers are facing in gaining operating rights in Canada as well as in Mexico. These two countries are applying much more stringent tests than the United States applies in granting operating authority to foreign owned or controlled trucking companies.

Therefore I am pleased that H.R. 3663 contains language that is intended to deal with motor common carriers domiciled in Canada or Mexico, or which are owned or controlled by persons domiciled in these two countries, which seek operating authority from the ICC. The language in H.R. 3663 makes it very clear that the Congress believes reciprocity is a vital factor to be considered when the ICC makes a decision on granting operating authority to a Mexican or Canadian owned or controlled trucking company.

While the Commission has the authority under existing statute to consider the issue of reciprocity in granting operating authority, I strongly believe that the language in H.R. 3663 will encourage the Commission to seriously consider the issue of reciprocity when granting authority to foreign trucking companies. Everyone should have to play by the same rules.

As a member of both the Subcommittee on Surface Transportation and the full Public Works and Transportation Committee I intend to closely follow this legislation and the ICC's actions in the area of considering reciprocity. This is a matter of equity that needs to be resolved.●

Mr. SHUSTER. Mr. Chairman, I yield myself as much time as I might consume.

Mr. Chairman, I simply would make the point that this legislation is compromise legislation which has the support of the various groups which are interested legitimately in the bus industry and bus service to the American people. I would emphasize that this legislation not only is supported by the intercity bus industry, large and small, but it is supported by labor, and most significantly it is supported by consumer groups. In fact, the Transportation Consumer Action Project, which represents 15 different consumer groups, have all come out in support of this legislation.

More interestingly, those consumer groups say that they believe that this bill will improve service to small communities.

Beyond the opinion, the judgment of those consumer groups that this legislation will improve service to small communities, we have the empirical experience. We have the evidence from the State of Florida where as a result of regulatory reform, in fact deregulation that goes far beyond the modest efforts in this bill, in Florida they actually did have increased service, flexibility, minibuses, to large and small communities alike. It worked well and it provided better intercity bus service.

So for all of those reasons, although I would be quick to add no particular group gets everything it wants in this legislation, these various groups have come forward to support this legislation because, on balance, it is a good compromise which does provide for increased competition and flexibility in this important industry while at the same time providing substantial safeguards, particularly for the small communities involved.

I have no further requests for time, Mr. Chairman, and I yield back the balance of my time.

Mr. ANDERSON. Mr. Chairman, I yield myself such time as I may consume.

I would just like to comment on a couple of remarks made a moment ago. I want to point out that our committee was very concerned about the same points that were raised, and indeed, have properly addressed them in the bill which is before us.

The committee was very careful and we said that the ICC must specifically look at the impact on commuter operations in considering entry applications and we also directed, the Commission to deny entry if it results in cream-skimming or cherry-picking that will result in a substantial reduction of any carrier's operation, whether public or private, contrary to the public interest.

We tried to be very specific. We said in here:

> For purposes of paragraphs (1) and (2) of this subsection, transportation to be authorized by issuance of a certificate under this subsection shall not be consistent with the public interest if the Commission finds, on the basis of evidence presented by persons objecting to such issuance, that such issuance would impair, contrary to the public interest, the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides.

We have tried to be specific throughout the bill in protecting commuter operations because we are just as concerned as anybody about this, and I might say that it was a particular concern of mine during the drafting process.

Mr. ECKART. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON. I yield to the gentleman from Ohio.

Mr. ECKART. I appreciate the gentleman yielding.

The point I wish to make and would like to make as an inquiry to the gentleman is simply this: Under the current provisions of the law, a municipality that feels they may have been adversely affected by a determination can do so at their State level. Now that requirement is for them to come to Washington, to the Interstate Commerce Commission, to have a hearing here, far away from the affected area, far away from the municipality that is directly affected and, in fact, may complicate the rulemaking process.

Mr. ANDERSON. The gentleman is incorrect. The State acts first. A carrier goes before its State commission, and that commission has the authority. If an interstate route matter is in question, a carrier may appeal a State decision, on a case-by-case basis to the ICC. But if a State decision pertains only to intrastate transportation, the State has the final authority. The ICC may only be involved in those matters that are interstate in nature, including intrastate segments of interstate routes.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

FGC
Attachment 3
Page 1 of 2

JAMES J. HOWARD, N.J., CHAIRMAN
GLENN M. ANDERSON, CALIF.
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FOFO I. F. SUNIA, AM. SAMOA
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Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515
TELEPHONE: AREA CODE 202, 225-4472

January 25, 1983

Honorable Nick Joe Rahall, II
House of Representatives
440 Cannon House Office Building
Washington, D.C.

Dear Nick:

Thank you for your letter in which you make certain inquiries about the Bus Regulatory Reform Act of 1982.

Since the service at issue was instituted prior to August 1, 1982, the exit test in section 10935(e)(1)(A) applies. If a request for discontinuance has been denied by a state or a state has failed to act upon such a request within 120 days after the request was made, a carrier can seek review by the Interstate Commerce Commission. The Commission must grant permission to the carrier to discontinue the service unless on the basis of the evidence presented by the person objecting to the discontinuance it finds that the discontinuance is not consistent with the public interest or that continuing the transportation without the proposed discontinuance will not constitute an unreasonable burden on interstate commerce.

Note, this test is stated in the disjunctive, therefore, persons opposing the discontinuance can prove either point and succeed in their objection. This point was strongly recommended by you and others who were cautious in their approach to the legislation in order to assure service to small communities. By adopting this dual exit standard for service commenced before or after August 1, 1982, the Act provides more protection to existing service than to new service, the reasoning being that it was a desirable approach to encourage new service by the carriers.

The act establishes guidelines for the Commission to follow in making a determination as to whether or not the discontinuance should be allowed. A compromise adopted by the Conferees and which appears in section 10935(g)(1) provides "...the Commission shall accord great weight to the extent to which interstate and intrastate revenues received for providing the transportation proposed to be discontinued or reduced are less than the variable costs of providing such transportation, including depreciation for revenue equipment. For purposes of the preceding sentence, the carrier filing a petition for permission to discontinue or reduce service shall have the burden of proving the amount of the interstate and intrastate revenues received for providing the transportation."

In addition, subsection 10935(g)(2) requires that in making its determination the Commission must consider, to the extent applicable, the national transportation policy (part of which is to preserve and maintain service to small communities), offers of subsidies or subsidization, and whether or not the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available.

The requirement that the Commission consider "whether a reasonable alternative to such service is available" when it is considering a request to discontinue service does not require the carrier to find a replacement service, however, as a practical matter it would seem that the Commission would be more apt to grant a discontinuance if there were other service available. Thus, even though, it does not impose a burden on the carrier to find replacement service, it does encourage it.

In order to give the States and affected communities time to find a replacement service where the Commission permits a discontinuance, the Commission was given discretionary authority to require the carrier seeking the discontinuance to provide service for up to 165 days from the date the request was filed with the Commission.

The Act also contains other provisions which enable carriers to raise rates on intrastate service so that the carriers would not lose money on intrastate service, and, thus would not find it necessary to seek discontinuances. However, nothing in the Act requires the carriers to seek increases. In the same vein, nothing precludes the Commission from considering this matter in a discontinuance proceeding.

Finally, the Act makes it much easier for carriers to institute new interstate service and service on intrastate portions of their interstate routes. Moreover, the Act provides an extremely easy entry test in new subsection 10922(c)(4) for new service where a community is not regularly serviced by a carrier or where a carrier seeks to discontinue service to a community.

Every best wish.

Sincerely,

Jim Howard

JAMES J. HOWARD
Chairman

FGC
Attachment 4

EC

SERVICE DATE
AUG 2 5 1983

PUBLIC SERVICE COMMISSION
OF W. VA.
SEP 6 1983
RECEIVED
MOTOR CARRIER DEPT.

INTERSTATE COMMERCE COMMISSION

No. MC-1515 (Sub-No. 332)

PETITION OF GREYHOUND LINES, INC., FOR REVIEW OF A DECISION OF
THE WEST VIRGINIA PUBLIC SERVICE COMMISSION
PURSUANT TO 49 U.S.C. 10935

Decided: August 23, 1983

This decision grants a petition of Greyhound Lines, Inc., filed under Section 16 of the Bus Regulatory Reform Act of 1982, for review of a decision by the West Virginia Public Service Commission denying permission to discontinue regular-route intrastate passenger service over various routes in West Virginia. The Commission finds that those objecting to the proposal failed to make the requisite statutory showing that the discontinuances are not consistent with the public interest or that continuing the transportation will not consititute an unreasonable burden on interstate commerce. Greyhound Lines, Inc. is therefore authorized to discontinue bus service, in interstate and intrastate commerce, over the routes at issue.

Anthony P. Carr and Lat J. Celmins for petitioner.
Senator Robert C. Byrd, Franklin G. Crabtree, S. Thornton Cooper, and James E. Beck for objectors.

DECISION

BY THE COMMISSION:

By petition filed May 27, 1983, Greyhound Lines, Inc., (Greyhound or petitioner) seeks permission, pursuant to 49 U.S.C. 10935, to discontinue regular-route passenger service, as a motor common carrier, in interstate or foreign commerce, and in intrastate commerce, over six routes in West Virginia. Greyhound was recently denied permission to discontinue intrastate operations over the involved routes by the West Virginia Public Service Commission (WVPSC). Objections to the petition have been filed by Senator Robert C. Byrd and by the WVPSC.[1] Greyhound filed a rebuttal statement.

The petition is filed under Section 16 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat. 1102, codified at 49 U.S.C. 10935 (Bus Act), which became effective November 19, 1982. Section 16 allows private bus operators to seek permission from the Interstate Commerce Commission (ICC) to discontinue intrastate bus services over interstate routes (1) when they are denied such permission by the State regulatory body which would otherwise have jurisdiction or (2) when the State body fails to act on a discontinuance request within 120 days. If no person objects to the discontinuance within 20 days after a carrier files its petition with the ICC, permission for the discontinuance must be granted. If objections are filed, the carrier must then furnish an estimate of the annual subsidy required to continue the service. The Commission can approve discontinuance of intrastate passenger transportation only if the carrier also applies for authority to discontinue its corresponding interstate operations over the same routes and this Commission has granted or will grant such authority. Under Section 16, the Commission must take final action no later than 90 days after the petition is filed. Finally, before a discontinuance of service has become effective, the Commission may order the carrier to continue any part of the involved intrastate transportation for a period not to exceed 165 days from the date the petition was filed. Regulations to implement Section 16 were adopted in Ex Parte No. MC-161, Preemption of State Regulation - Regular Route Exit, 133 M.C.C. 20 (1982), and are codified at 49 CFR Part 1169.

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[1] In addition to the formal objections, a letter opposing discontinuance of intrastate service over one particular route was submitted by the Ritchie County (WV) Commission.

Section 16 of the Bus Act requires the Commission to grant a petition for discontinuance of intrastate service unless it finds, on the basis of evidence submitted by persons objecting to the discontinuance, that such discontinuance is not consistent with the public interest or that continuing the transportation will not constitute an unreasonable burden on interstate commerce. In making this determination, the Commission is directed to accord great weight to the extent to which interstate and intrastate revenues derived from the involved service are less than the variable costs, including depreciation for revenue equipment, of providing the service. The petitioner has the burden of proving the amount of revenues and variable costs.[2] The Commission is further required to consider, to the extent applicable, at least (1) the national transportation policy of 49 U.S.C. 10101, (2) whether the petitioner has been offered or is receiving financial assistance to provide the transportation services at issue, and (3) whether the transportation is the last motor passenger carrier service available to points on the involved routes and whether a reasonable alternative to such service is available. These standards and factors which will govern our disposition of the petition before us were also addressed in some detail in the State proceeding.

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[2] These provisions apply to petitions involving routes over which the carrier was granted authority to provide interstate passenger transportation on or before August 1, 1982. The routes at issue in this proceeding all meet this criterion. Somewhat different decisional standards apply to petitions involving routes for which interstate operating authority was granted after that date.

BACKGROUND

On November 29, 1982, Greyhound filed an application with the WVPSC seeking permission to discontinue intrastate operations over 11 specified routes. Its application was accompanied by various supporting materials, including a description of how the routes to be discontinued were selected and a comparison of revenues to variable costs associated with these routes. This comparison uniformly showed variable costs exceeding revenues by a significant margin.

The WVPSC scheduled ten hearings on the application and required petitioner to give notice of its application and of the hearings through newspaper publication as required by State law. One hearing was held in Charleston, the State capital. At this hearing, WVPSC staff principally questioned certain operating data submitted by Greyhound in support of its application. The other hearings were held at points located on the affected routes. Approximately 70 interested persons and users of Greyhound's intrastate services appeared at these hearings to oppose the application.

The Hearing Examiner entered his decision on March 22, 1983. Initially, the decision described the services sought to be discontinued and extensively summarized the testimony taken at the individual hearings. A short discussion of Greyhound's financial evidence and WVPSC staff criticism of this evidence followed. The Hearing Examiner then set out the provisions of Section 16 of the Bus Act. Because these provisions would be applied in any review of his decision by this Commission, he concluded that they should likewise be used as the standard for reaching a decision at the State level.

The decision then found that, although Greyhound's evidence indicates its revenues from service over the routes at issue may not be meeting its variable costs of providing the service, the record discloses that Greyhound has made little effort to mitigate these losses. Specifically, the decision concluded that Greyhound has failed to advertise sufficiently and promote its services. It also found that Greyhound has not made every effort to reduce costs by exploring the use of smaller vehicles in historically low-ridership areas. Nevertheless, the decision next stated that protestants and WVPSC staff had failed to show that the public interest required continuation of service over certain routes at issue. In the Hearing Examiner's opinion, requiring continued service over these routes "would undoubtedly constitute an unreasonable burden on interstate commerce." Thus, the decision concluded that Greyhound should be allowed to discontinue service over five of the 11 routes covered by the application. With respect to three of the other six routes[3], the Hearing Examiner made various findings and recommendations. He stated that Greyhound should continue to serve the City of Ravenswood, WV, but not necessarily over "Route 13." If Greyhound institutes alternate service to this point on a less frequent basis, the Hearing Examiner recommended the WVPSC reconsider a filing to abandon Route 13. Similarly, the Hearing Examiner recommended that Greyhound submit a proposal for less frequent service over "Route 17" in lieu of total discontinuance of service. With respect to "Route 16," the Examiner noted that no member of the public appeared at the hearing held in Harrisville, WV, along this route. Based on his earlier finding that Greyhound had failed to comply with all State notice requirements, the Examiner concluded that petitioner should refile for permission to abandon this route. In conclusion, the Hearing Examiner found that the public interest required a continuation of at least partial service on Routes 13 and 17 and that discontinuance of service over Routes 6, 14, 15, and 16 would not be consistent with the public interest. The Hearing Examiner's decision was affirmed by the WVPSC on March 28, 1983.

In its petition for review of the WVPSC decision, Greyhound emphasizes the extensive analysis of its intrastate West Virginia operations which resulted in its application to discontinue service over 11 routes. It further stresses its comparison of revenues to variable costs for the six routes at issue here and the substantial disparity between revenues and costs. Greyhound states it is seeking to rationalize its West Virginia intrastate route structure through the proposed discontinuances. If petitioner is forced to continue service over these routes, it states it will be compelled to seek higher rates on other routes to make up its losses. Petitioner believes this result would be inequitable to customers forced to subsidize financially routes that are not financially viable and could lead to diversion of Greyhound traffic to other transportation modes. It also asserts that the inconvenience to some patrons resulting from discontinuance will be minimal and will be outweighed by the benefits of better service to the vast majority of its passengers. Greyhound specifically denies that it has failed to

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3/ A description of these six routes and petitioner's calculation of revenues, variable costs and fully allocated costs associated with these routes are found in Appendices A and B, respectively, to this decision.

employ reasonable management practices to reduce costs. It argues that its newspaper publication with regard to discontinuance of service over Route 16 did meet State notice requirements. Finally, petitioner expresses puzzlement that, on the basis of "similar and like evidence entered into the record," the WVPSC permitted certain routes to be discontinued and denied discontinuance of other routes. In general, Greyhound asserts that the State decision exemplifies the type of burdensome regulation resulting in unreasonable discrimination against interstate commerce for which Section 16 of the Bus Act provides a remedy.

In his formal objection to the relief sought in the Greyhound petition, Senator Byrd stresses the directive at 49 U.S.C. 10101(a)(2)(E) which requires this Commission, in regulating transportation by motor carrier, to "provide and maintain service to small communities and small shippers and intrastate bus services." He states that evidence was submitted at the public hearing demonstrating that discontinuance would be inconsistent with the public interest because it would endanger those communities and individuals who are most vulnerable. Senator Byrd cites testimony by senior citizens who rely on petitioner's service for frequent trips to the doctor or to have prescriptions filled. Other persons without their own automobiles travel to and from work daily on petitioner's busses. Local governmental officials, businessmen, and college administrators pointed out the adverse impact which loss of all intercity bus service would have on areas which are already relatively isolated and economically depressed. With respect to package express service, other witnesses testified to the importance of Greyhound's service for prompt delivery of replacement parts to mines and of medical supplies and blood to area hospitals. The Commanding Officer of the Marine Corps in West Virginia stated that the use of bus service for recruitment purposes is crucial. Senator Byrd emphasizes that no other passenger bus service would remain at points on the routes where Greyhound seeks permission to discontinue its services. Alternate services on package express shipments would be available, although several witnesses stated that these services were not as responsive as those of Greyhound.

In addition to the adverse impact of discontinuance of service on individuals and small communities, Senator Byrd notes the WVPSC's findings that Greyhound has made little if any effort to mitigate its losses on the routes. He cites testimony that Greyhound has not publicized its services along the routes at issue and that recent scheduling changes have made it more difficult for regular patrons to utilize petitioner's services. (Letters from constituents submitted with Senator Byrd's pleading also discuss problems created by these scheduling changes.)

Senator Byrd also stresses the expressed willingness of almost every public witness to travel in smaller vehicles and to pay higher fares as alternatives to a complete loss of service. In this regard, Senator Byrd informs the Commission that on March 26, 1983, the WVPSC approved a 25.79 percent increase in intrastate fares which will generate $299,444 in additional revenues for Greyhound's West Virginia intrastate operations. These rate increases, if taken into account, would alter petitioner's comparison of revenues to variable costs for the routes at issue here. For all these reasons, Senator Byrd requests that this Commission deny the Greyhound petition.

In its objection, the WVPSC makes many of the same points found in Senator Byrd's pleading. It cites testimony by current users of Greyhound services concerning the adverse impact of loss of these services and the expressed willingness of the witnesses to pay higher fares to retain service. The WVPSC contends that petitioner has significantly overstated the financial impact of continuing service over the subject routes. With respect to revenues attributable to these routes, the WVPSC notes the recent 25.79 percent rate increase granted to Greyhound and points out that the $299,444 statewide projected to be generated by this increase exceeds the difference claimed by petitioner between variable costs and revenues for the routes at issue. Objector also questions the validity of Greyhound's use of study data based on only one week (November 1-7, 1982) to develop annual revenue estimates. It points out the absence of any showing that this week is representative of petitioner's yearly operations. The WVPSC also criticizes the use of petitioner's methods for developing variable costs. In particular, the WVPSC criticizes the use of per bus mile costs for the eastern United States for all cost items and the treatment of certain administrative, advertising, and insurance costs as varying with the level of service or volume of traffic. The WVPSC further argues that Greyhound did fail to comply with State notice requirements and that discontinuance of service over Route 16 was properly denied for this reason.

The WVPSC emphasizes the findings in the State decision that Greyhound has not adequately promoted its services over the routes at issue and has failed to pursue cost reduction measures such as the use of smaller busses. It argues that the State of West Virginia has been responsive to Greyhound's needs in granting almost every requested rate increase since 1975, in authorizing discontinuance of service over some of the routes in Greyhound's application, and in suggesting reductions in service rather than complete discontinuance for other routes. In summary, the WVPSC argues that Congress in the Bus Act intended to assist carriers whose good faith efforts have produced no appreciable results in stimulating service usage. Because Greyhound has failed to make these efforts, and given the adverse effects of further service discontinuances shown in the State record, the petition should be denied.

In its rebuttal, Greyhound stresses the problems which carriers experienced under burdensome State regulation prior to the Bus Act. It notes that persons opposing a petition filed under Section 16 have the burden of showing that discontinuance is not consistent with the public interest or that continuing the transportation will not unreasonably burden interstate commerce. Greyhound contends that it has properly calculated revenues and variable costs attributable to the routes at issue. It also states that the intrastate rate increase granted by the WVPSC on March 26 is "irrelevant" to this proceeding because even this increase will not bring revenues up to the level of variable costs for these routes. Greyhound argues strenuously that it has advertised and promoted its services in the affected areas. It also states that the use of smaller vehicles over these routes would not significantly reduce costs because driver's wages and most other expenses are not affected by vehicle size. Finally, Greyhound again asserts that it provided proper notice of its proposal to discontinue service over Route 16. Although a State procedural order required Greyhound to advertise this proposal in a newspaper published in, among others, Ritchie County, petitioner avers that there is no daily newspaper published in that county. It contends that its notices in a newspaper published in an adjoining county and circulated in Ritchie County were sufficient to advise the public of its intentions with respect to Route 16.

WVPSC'S NOTICE REQUIREMENTS

As an initial matter, we must consider whether Greyhound's request to discontinue service over Route 16 is properly before us. The WVPSC procedural order of December 9, 1982, required Greyhound to give notice of its application by publishing a copy of the procedural order at least twice prior to January 12, 1983, in newspapers published in each of 20 named counties. Greyhound published the order in only eight newspapers. It contended before the WVPSC that these eight newspapers served each of the 20 counties named in the State order and that "published" has the same meaning as "distributed." The WVPSC found, however, that for purposes of legal publication, State law considered a newspaper to be published where it is first placed in circulation. In light of the significant public attendance at most hearings, the State decision nevertheless concluded that Greyhound had substantially complied with its publication order. Because no member of the public appeared at the hearing held in Harrisville, Ritchie County, however, the WVPSC denied permission to discontinue service over Route 16 until the application could be refiled and proper notice given.

While we have previously indicated that we are reluctant to review the procedural requirements imposed by a State body in a section 16 proceeding, we think review of compliance with the notice issue is necessary in this case. This is a significant first case under Section 16 of the Bus Act. In the deliberations on this case, both the State Commission and the Interstate Commerce Commission in a review capacity must be guided by principles of fairness and consistency. We find WVPSC's denial of exit on Route 16 based solely on the procedural notice issue to be arbitrary and capricious as its approach was not consistent with its decisions on the other routes. 4/

After a detailed review of the State record and filings, we find that Greyhound substantially complied with its statutory obligation to notify the public of the scheduled hearings. While the record shows Greyhound did not publish a copy of the PSC order at least twice in newspapers published in each of the counties (as required by the West Virginia Code), it did publish this notice in a newspaper of general circulation in each of the named counties.

While it is argued that the lack of public attendance at the Harrisville hearing was due to the lack of proper notice in a newspaper published in Ritchie County and ultimately is the reason for the denial of the exit application for that route, other affected counties also did not receive "proper notice" yet, the WVPSC approved the exit applications for those routes.

4/ We do not reach the question of whether the notice rules are acceptable per se. See 49 U.S.C. 10521 and 11501.

For instance, the hearing at Sutton in Braxton County was noticed in the Charleston Gazette (Kanawha County). Although the notice did not meet WVPSC's procedural requirements, the WVPSC found that the sought discontinuance was in the public interest. In another case, notice was made to certain counties by an out of State newspaper (The Cumberland Times (Maryland)). That exit application was denied not on the basis of notice but on public interest grounds. We cannot approve of this inconsistent and arbitrary treatment.

Finally, although unnecessary to our decision, we believe adequate notice of the Harrisville hearing was provided in the Parkersburg Sentinel and the statewide Charleston Gazette. We note from a review of the State record that passenger revenues on this route amounted to only $678 (an average of $1.86 per day) for the 12 months ended October 31, 1982. This could be indicative of a limited interest in this passenger route discontinuance.

DISCUSSION AND CONCLUSIONS

As this is the first exit petition we have decided on the merits, it is important to address the basic principles that guide us and our approach to this very sensitive area.

The Bus Act lists a number of factors we are to weigh in our analysis of intrastate exit. These include cost and burden on interstate commerce--matters that address the carrier's profitability and questions of cross subsidy. Others involve such factors as whether other bus service will remain and if not, what the regulatory role should be.

The Act does not, however, specify exactly the weight to be given each factor. Instead, it leaves these extremely difficult and emotionally charged issues to us to balance. Overall, the history and purpose of the Bus Act point in the direction of a lesser regulatory role, but with special concern in bus exit cases for those who must depend on bus service. Remarks of Rep. Shuster point up the conflict created by these divergent concerns.

> Now, we cannot have it both ways. It we say on the one hand that we want to open it up, ease the entry, let more competition come in and compete for the business available, we cannot then turn around and say, however, we are going to make it impossible for the industry to get out of providing services no matter what, even if the demand is not there, regardless of the cost, regardless of the losses. C. Record, H. 8590, November 19, 1981.

We approach this case with the same concerns expressed by Rep. Rahall when he said "[F]or much of rural America the bus company is the only game in town." C. Record, supra. We appreciate the importance of this bus service to the affected areas of West Virginia, and the difficulties and inconveniences that will be created should Greyhound be permitted to discontinue service over these six routes. Although the discontinuance covers only a very limited area, its effect on each of the individuals dependent on this service is no less great than if a larger area was affected.

Turning now to the case at hand, we will first address Greyhound's cost evidence, as the statute places substantial importance on the profitability question. Section 16 directs this Commission to "accord great weight" to the extent to which interstate and intrastate revenues attributable to the services to be discontinued are less than the variable costs of providing these services. Petitioner has submitted evidence showing variable costs exceeding revenues for the routes at issue. The WVPSC has questioned the inclusion of certain cost items in petitioner's calculation of variable costs and the use of regional average costs rather than actual costs for all computations. Even if petitioner had followed all the steps advocated by this objector in calculating variable costs, it does not appear that the level of these costs would have been significantly affected. Greyhound's development of revenues attributable to service over the routes under consideration was subject to more serious challenge by the WVPSC. Greyhound used a one-week traffic sample as a basis for determining revenues for that week and then used this weekly revenue as a basis for annualizing revenues for the prior 12-month period. We recognize that this method is less expensive and time consuming than a more comprehensive study of actual revenues. While it may be difficult to understand the revenue calculation method used by Greyhound and Greyhound perhaps should have explained the calculations more clearly during cross-examination, we believe that the method is fully explained in the Greyhound exhibit "Explanation of Revenue and Cost Calculations and Underlying Assumptions" and supporting schedules and is reasonable. We must dispel any inference that the one-week revenue number was simply multiplied by 52 to approximate annual revenues. That was not done. If Greyhound had used such an approach, the revenue projection would be highly suspect. However, as fully explained in the testimony, Greyhound linked the revenues and the ridership on the routes in question to more complete weekly and monthly data series routinely collected by Greyhound management for the larger geographic areas in which the routes are located. Once a relationship was established between the operating and revenue characteristics of the route in question and the larger area, a projected monthly series of revenue, mileage and passengers could be developed. This monthly projection for the route in question takes into account all of the seasonal trends of bus ridership in the larger geographic area. While this method appears complicated and questions about the comparability of the route in question with the larger area could be raised, we believe that this method and the revenue projections are reasonable.

The WVPSC also noted that Greyhound's revenue figures do not reflect an 18 percent 5/ increase in intrastate passenger rates granted by the WVPSC six days after issuance of the State decision on the exit application and two months before Greyhound filed its petition for review of that decision. The record does not reveal whether all intrastate passenger rates were to be increased by 18 percent or whether this is an average figure reflecting greater and lesser increases on particular routes. Thus, we cannot determine the exact impact of the increase on the revenue calculations submitted by Greyhound in this proceeding. However, we do not agree with Greyhound that the increase is "irrelevant" to its petition here. Moreover, we caution parties in future cases to present sufficient justification for all cost evidence, including explanations of and justifications for use of representative data.

Although we are unable to determine the precise extent of the disparity, we conclude, however, that Greyhound has shown that revenues are significantly below the variable costs for providing service over the routes at issue. The general level of variable costs submitted by Greyhound has not been seriously challenged. The disparity between those costs and Greyhound's revenue computations is so substantial that, even allowing for some bias in selection of a sample week and for rate increases possibly somewhat in excess of 18 percent on individual routes, the disparity would remain. More importantly, this finding is consistent with the pleadings filed by the objectors. Neither objector argues that Greyhound's revenues for the routes at issue exceed its variable costs of providing service over these routes. Rather, these parties strongly contend that petitioner has not taken reasonable steps to decrease its losses.

Objectors stress the expressed willingness of many witnesses at the State hearing to pay higher fares or to ride in smaller buses. Other witnesses testified to confusion over Greyhound's schedules and asserted that petitioner has not adequately advertised its services. On the basis of this testimony, the WVPSC decision found that petitioner had not actively sought to reduce its costs and to promote increased ridership on the routes at issue.

This finding cannot be supported on the record before us. Those witnesses who stated their willingness to pay higher fares in order to retain service did not identify the level of increases which they were prepared to accept. Absent more specific information on this issue from current patrons and cost justification (e.g., from WVPSC), Greyhound's

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5/ The figure of 25.79 percent cited by objectors is the increase in package express rates, not passenger rates.

business judgment that the involved routes cannot be made profitable through fare increases is entitled to substantial weight.

As in the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980, the Bus Act represents a Congressional policy to remove in great part regulatory second-guessing of carrier management. Here, Greyhound cannot fairly be accused of "trying to fail." The record shows that Greyhound has actively managed these services. It has consistently increased fares (e.g., 24 percent in 1978, 25 percent in 1980, 15 percent in 1981, and 18 percent in 1983, in an attempt to cover ever-increasing costs. Yet, these efforts have been unsuccessful. Clearly, there comes a point where further rate increases become counterproductive and serve only to divert ridership. Absent evidence to the contrary, we cannot conclude that Greyhound has made an unreasonable business decision to exit rather than further revamp its services given the extent of its losses. Moreover, even if prices were raised to cover variable cost, significant fixed cost losses would continue and would have to be subsidized by other traffic.

Protestants also suggest that Greyhound should be required to maintain service, but with lower-cost equipment. However, the use of smaller buses on these routes would constitute, in effect, the provision of a new service, in a limited territory, with the attendant start-up costs unavoidable for a new type of service. Also, many expenses such as labor costs would not be affected by a reduction in the size of vehicles used on the routes. We cannot find that Greyhound's reluctance to institute a new service over routes which have proven unprofitable for its existing service is unreasonable.

Finally, complaints concerning petitioner's service schedules and advertising policies do not support the argument that petitioner has failed actively to promote ridership. As a national carrier, Greyhound advertises in media throughout the country. It cannot, however, be expected to advertise regularly in every local publication. Contentions at the State hearings that individuals have had difficulty obtaining scheduling information are to be expected in rural locations where information is not as readily available as in urban centers. For all these reasons, the record will not support allegations that Greyhound has contributed to losses on these routes by failing to take reasonable management initiatives.

In deciding an exit petition under Section 16, the Commission is also required to consider the national transportation policy of 49 U.S.C. 10101, the availability of alternate service, and any financial assistance offered to, or received by, the carrier. Greyhound is not now receiving any subsidies in connection with service over the routes at issue, and no offers of future subsidies have been made. There is thus no need to consider petitioner's evidence on the amount of subsidies required to retain service on the routes except to note its fully allocated cost computations (see Appendix B). Greyhound is currently the only motor carrier of passengers serving points on these routes. Discontinuance will affect both passenger and package express services. Several witnesses testified at the State hearings that Greyhound's package express service is more responsive than that of other carriers. It is unclear, however, whether the services of these other carriers have been fully tested. In any event, package express service from carriers specializing in such service will still be available upon any discontinuance by Greyhound. Accordingly, in light of the cost evidence and available alternate services, we believe the discontinuance of package express service is warranted under the statutory criteria. Protestants have not shown it to be inconsistent with the public interest or otherwise required.

Objectors strongly emphasize that the national transportation policy set out at 49 U.S.C. 10101 includes as one goal the provision and maintenance of service to small communities and small shippers and of intrastate bus services. Authorization of the discontinuances proposed by Greyhound will result in a cessation of all passenger service to points on the involved routes. We recognize that this will cause hardship for individuals who now use this service and for communities located on the routes. The record clearly shows that certain individuals and communities rely on Greyhound's intrastate service. We do not dispute this evidence, and are equally concerned with the effect discontinuance may have on these individuals. We also appreciate the concern expressed by the local officials and business persons that discontinuance will hurt their already depressed economies. It cannot be assumed, however, that these individuals will be unable to reach their destinations. Many testified to taxi service availability, albeit at an increased cost. Bus service, including Greyhound's, remains available on other routes that may be accessible to protestants. Other protestants acknowledged that it would be possible to obtain rides from neighbors or relatives for these relatively short distances.

No one seriously disputes Greyhound's losses on these routes. In the Bus Act, Congress provided a mechanism by which states, local communities or other entities could demonstrate that they have a concrete interest in maintaining unprofitable services. This mechanism is the offer of a subsidy. If an acceptable subsidy is offered, it is likely that the exit petition would be withdrawn or denied. Yet, despite the importance the parties claim to place on the service, no State, regional or local authority has offered any amount of subsidy to Greyhound to maintain service over any or all of these routes. Therefore, it is difficult to make a finding that the public interest requires maintaining these services. While we recognize that many factors enter into whether to offer subsidy, we must, under the statute, take the lack of such an offer into consideration.

Finally, if a demand for transportation service in this area exists and can be supplied profitably in some form, new business will enter the field. It is possible that local entrepreneurs will expand existing services or begin new ones which may be more appropriate than Greyhound's to the conditions in this area. Throughout the nation, call-on-demand and other innovative types of passenger transportation are growing. This may even provide new local business opportunity. In this particular case, the large estimated subsidy figures may be an indication that a less costly form of service would be more appropriate in this area--perhaps involving smaller vehicles, lower wages and a different marketing and scheduling approach.

A number of other goals set forth in the national transportation policy support Greyhound's request. These include allowing the most productive use of equipment and energy resources, enabling efficient and well-managed carriers to earn adequate profits and attract capital, and improving and maintaining a competitive privately owned motor carrier system. Requiring Greyhound to continue service over routes where its revenues do not meet its variable costs, much less its full costs, would be inconsistent with all these goals. Furthermore, requiring Greyhound to continue unprofitable operations over the routes could jeopardize its ability to provide intrastate bus service to individuals and small communities on other routes in West Virginia and in other States. It would not be appropriate to consider a limited number of routes in isolation from Greyhound's total service obligations.

Overall, we are faced with a relatively narrow proposal to exit from six routes in West Virginia. While a number of individuals and communities are concerned and will be adversely affected (to different degrees), the factors the statute directs us to consider appear, as discussed above, to weigh in Greyhound's favor. Considering all the evidence, we cannot on this record find that protestants have met their burden of proving the proposal inconsistent with the public interest or maintaining it not an undue burden on interstate commerce. As directed by the statute, we have accorded great weight to the significant losses below variable cost, and have analyzed the burden on interstate commerce created by these losses, the continuing cross-subsidy that these operations would require, the lack of subsidy (existing or future), and the policy favoring profitable and efficient private operations. On protestants' side, we have considered the present lack of alternative passenger service, and Congress' concern for small communities. We believe the record before us compels a finding in Greyhound's favor in this proceeding.

We must also address the WVPSC decision itself. In enacting Section 16 of the Bus Act, Congress clearly intended that the State have a full and fair opportunity to act on applications to discontinue bus services before our preemptive jurisdiction is invoked. The West Virginia decision states it is applying Federal discontinuance standards; thus, it should not be ignored in our analysis here. The WVPSC allowed discontinuance of service over five routes but denied authority to discontinue service over six routes. With the exception of Route 16, the decision fails to explain why some discontinuances were denied and some were granted. From the record, it appears that the extent of opposition at individual hearings may have determined in part the result reached by WVPSC. However, the basis for the State's action on specific routes is never explained beyond conclusory findings. For this reason, we are unable to accord any significant weight to the State's conclusion that discontinuance of service over certain routes should be denied.

The provisions of 49 U.S.C. 10935(f) permit this Commission to order a carrier filing a petition under Section 16 to continue intrastate service over affected routes for a limited period before discontinuance becomes effective. While no party to this proceeding has sought such an order, we will exercise our discretion and require Greyhound to continue service for 45 days. During this period, state, regional or local groups may wish to consider possible subsidy payments to Greyhound or another carrier or make plans for alternative services.

Our decision here authorizes discontinuance of both interstate and intrastate operations over the routes in question. Greyhound has identified those certificates which currently authorize interstate operations over these routes. Although discontinuance can be effected by total or partial revocation of certain certificates, other certificates will require modification. Greyhound will be directed to describe specifically the modification to its certificates that will be consistent with this decision.

This decision will not adversely affect the quality of the human environment or the conservation of energy resources.

We find:

Objectors have not shown that the service discontinuances proposed by Greyhound in its petition filed May 27, 1983, are not consistent with the public interest or that continuing the transportation will not constitute an unreasonable burden on interstate commerce.

No. MC-1515 (Sub-No. 332)

It is ordered:

The petition is granted. Greyhound is authorized to discontinue bus service, in interstate or foreign commerce, and in intrastate commerce, over Routes 6, 13, 14, 15, 16 and 17 set out in its petition 45 days from the service date of this decision.

Corresponding portions of Greyhound's interstate authority are revoked effective 45 days from service if the services are discontinued. Greyhound Lines, Inc., should, within 60 days after the service date of this decision, submit a description of the modifications to its certificates necessary to effect this decision, accompanied by draft revised certificates.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Gradison did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

APPENDIX A

INTRASTATE SERVICE PETITIONER REQUESTS PERMISSION TO DISCONTINUE

Route (6) Beginning at Charleston, Kanawha County; thence in a southerly direction over U.S. Route 119 to its intersection with State Route 3; thence in a southerly direction over State Route 3 to its intersection with U.S. Route 21 at Beckley, Raleigh County, returning to the place of beginning over the same route by a reverse order of description; subject to the condition that no passenger shall be transported whose entire ride lies between Charleston, Kanawha County and Racine, Boone County, or intermediate points, and between Beckley and Eccles, Raleigh County, or intermediate points.

Route (13) Beginning at the intersection of State Route 56 with U.S. Route 21; thence over State Route 56 to its intersection with State Route 2 at Ravenswood, Jackson County; thence over State Route 2 to Parkersburg, Wood County, returning to the place of beginning over the same route by a reverse order of description.

Note: State Route 2 is now designated as State Route 68.

Route (14) That portion - Beginning at Clarksburg, thence over U.S. Route 50 to the West Virginia - Maryland State Line, approximately four miles east of Aurora, Preston County; subject to the condition that no passenger shall be transported whose entire ride lies between Clarksburg and Bridgeport, Harrison County, or intermediate points.

Route (15) Beginning at the West Virginia - Maryland State Line at Gormania, Grant County; thence over U.S. Route 50 to the West Virginia - Virginia State Line, approximately three miles east of Capon Bridge, Hampshire County, returning to the place of beginning over the same route by a reverse order of description.

Also, M.C. Case No. 17184, July 10, 1968, amending P.S.C.M.C. Certificate No. 5184.

From the junction of U.S. Route 50 and West Virginia Route 7 over West Virginia Route 7 to its junction with U.S. Route 220, thence over U.S. Route 220 to Keyser, West Virginia, thence from Keyser, West Virginia, returning over U.S. Route 220 to the junction of U.S. Route 220 and U.S. Route 50 just south of New Creek, West Virginia.

Route (16) Beginning at Ellenboro, Ritchie County; thence over State Route 16 to Harrisville, Ritchie County; thence over State Route 31 to Nutters Farm, Ritchie County, returning to the place of beginning over the same route by a reverse order of description.

Route (17) Beginning at Charleston, Kanawha County; thence in a northeasterly direction over U.S. Route 119 through Spencer, Roane County, to its intersection with U.S. Route 19 at Weston, Lewis County; thence in a northerly direction over U.S. Route 19 to its intersection with U.S. Route 50 at Clarksburg, Harrison County, returning to the place of beginning over the same route by a reverse order of description; subject to the condition that no passenger shall be transported whose entire ride lies between Jane Lew, Lewis County, and Clarksburg, Harrison County, or between Jane Lew and Weston, Lewis County, or between Clarksburg, Harrison County, and Weston, Lewis County.

Also, M.C. Case No. 17184, January 19, 1972, amending P.S.C.M.C. Certificate No. 5184.

That portion - Between Clarksburg, Jane Lew and Weston via Highway U.S. 19.

Also, M.C. Case No. 18686, October 31, 1972, amending P.S.C.M.C. Certificate No. 5184, Item No. 17.

Between Glenville, Gilmer County, Grantsville and Millstone, Calhoun County, via West Virginia Route Nos. 5 and 16.

APPENDIX B

PETITIONER'S CALCULATION OF VARIABLE COSTS AND REVENUES FOR THE ROUTES AT ISSUE

Route No.*	Annual Total Revenue	Variable Cost	Variable Cost Exceeds Revenue	Fully Allocated Cost
6	$ 7,105	$ 25,954	($18,849)	52,765
13	212	4,592	(4,380)	9,471
14-15	87,771	150,045	(62,274)	296,509
16	7,404	12,924	(5,520)	25,258
17**	43,314	236,410	(193,096)	[illegible]431

*Route No. refers to the route segment set forth in Appendix A.
**Includes Route 18 (Clendenin-Weston) which WVPSC granted.

FGC
Attachment 5 EC

SERVICE DATE
SEP 13 1983

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-59238 (Sub-No. 74)

PETITION OF VIRGINIA STAGE LINES, INC., FOR REVIEW OF A DECISION OF THE WEST VIRGINIA PUBLIC SERVICE COMMISSION PURSUANT TO 49 U.S.C. 10935

Decided: September 9, 1983

By petition filed June 13, 1983, Virginia Stage Lines, Inc. (VSL), of Washington, DC, a wholly-owned subsidiary of Trailways, Inc., seeks permission, pursuant to 49 U.S.C. 10935, to discontinue regular-route passenger service, as a motor common carrier, in interstate or foreign commerce, and in intrastate commerce, within West Virginia, over authorized routes between Logan and Charleston and between Huntington and Welch, WV. Objections to the petition have been filed by the West Virginia Public Service Commission (WVPSC), jointly by Robert Mitchell and Doris Auville, and by Senator Robert C. Byrd and Congressman Nick J. Rahall, II. In addition to the formal objections, a large number of letters from individuals and businesses in the affected communities have been received. These letters do not reflect that copies have been sent to the carrier, and many of them have been received long after the July 5, 1983, due date for objections. In such circumstances, these letters cannot be given substantial weight as evidence of record in this proceeding. Petitioner filed rebuttal arguments.

The petition is filed under the provisions enacted by Section 16 of the Bus Regulatory Reform Act of 1982 Pub.L. 97-261, 96 Stat. 1102, codified at 49 U.S.C. 10935 (Bus Act) which became effective November 19, 1982. Section 16 allows private bus operators to seek permission from the Interstate Commerce Commission (ICC) to discontinue intrastate bus services over authorized interstate routes (1) when they are denied such permission by the State regulatory body which would otherwise have jurisdiction or (2) when the State body fails to act on a discontinuance request within 120 days. The Commission's rules governing such petitions are set forth at 49 CFR Part 1169.

The interstate certificate of public convenience and necessity which authorizes operations over the routes on which service is proposed to be discontinued was issued before August 1, 1982; therefore, the burden of proof applicable in this proceeding is defined by 49 U.S.C. 10935(e)(1)(A). We are required to grant permission to discontinue this service unless we find, on the basis of evidence presented by those who object to the discontinuance, that the discontinuance is not consistent with the public interest or that continuation of the service in question will not constitute an unreasonable burden on interstate commerce. We are also directed to accord great weight to the extent to which the applicable interstate and intrastate revenues are less than the variable costs of operating the service (including depreciation for revenue equipment). The carrier has the specific burden of proving the amounts of these revenues and costs. In general, we must also consider the national transportation policy of 49 U.S.C. 10101, the availability of financial operating assistance, and the availability of alternate transportation service (either by motor passenger carrier or by other modes), in reaching our decision.

BACKGROUND

Petitioner VSL filed its discontinuance request with the West Virginia Public Service Commission (WVPSC) on January 3, 1983. After oral hearings, the State hearing examiner entered a decision on March 21, 1983, recommending that the proposed discontinuance be denied. This recommended decision was affirmed by final action in an order served May 3, 1983.

The involved routes constitute those operations by this carrier in West Virginia generally west of Welch, as follows:

(1) Between Welch, WV, and Huntington, WV: From Welch over U.S. Highway 52 to Junction West Virginia Highway 80, then over West Virginia Highway 80 to Junction West Virginia Highway 10, then over West Virginia Highway 10 to Junction U.S. Highway 60, then over U.S. Highway 60 to Huntington, and return over the same route;

(2) Between the Junction of U.S. Highway 52 and West Virginia Highway 16 and the Junction of West Virginia Highway 10 and West Virginia Highway 80, at or near Man, WV: From Junction of U.S. Highway 52 and West Virginia Highway 16 over West Virginia Highway 16 to Junction West Virginia Highway 10, then over West Virginia Highway 10 via Oceana, WV, to Junction West Virginia Highway 80 at or near Man, and return over the same route; and

(3) Between Charleston, WV, and Logan, WV, over U.S. Highway 119.

Operations over these routes in interstate or foreign commerce are authorized by a certificate of public convenience and necessity in No. MC-59238 (Sub-No. 41), issued July 26, 1981, which also embraces numerous routes in the region which appear to be long dormant. Intrastate operations are authorized by Certificate No. 5392, reissued by the WVPSC on April 7, 1972. VSL will continue its present operations between Roanoke, VA, and Welch, via Princeton and Bluefield, WV.

VSL has attempted on two recent occasions to transfer the involved operations to smaller carriers, with the expectation that those carriers could have operated profitably due to lower operating costs. In the first instance, a transfer to Dayton & Southeastern Lines, Inc., was approved by this Commission in 1977 in No. MC-F-13298, but the WVPSC denied the proposed transfer after 2 years' consideration. In the second instance, a contract was made on June 9, 1981, to sell these routes to West Virginia Coach Company, and this Commission approved the transaction in No. MC-F-14713, but by the time the WVPSC scheduled a hearing in April 1982, the transferee had lost interest and the application had to be dismissed. Although the carrier has continued to seek a potential transferee, none has been found.

The exhibit which VSL has submitted to show its relevant revenues purports to set forth interstate and intrastate revenues for all of its West Virginia operations for the 12 months ending December 31, 1982. The carrier indicates that this exhibit assumes that revenue for those operations it would still conduct in West Virginia would be minimal, even though it is believed that a large part of the interstate revenues would be retained, since its studies have shown that most of its interstate traffic on these routes originates at or is destined to Welch. The exhibit reflects total West Virginia operating revenues of $444,386, of which $233,104 is derived from interstate, and $211,282 from intrastate, traffic. Of these totals, $79,360 represents interstate passenger revenue; $164,825, intrastate passenger revenue; $83,165, interstate package express revenue; and $22,240, intrastate package express revenue. The carrier also expects to retain approximately $70,000 in interstate charter revenues.

VSL states that its rates (presumably intrastate) for these services were increased in 1977 by 3 percent for passenger fares and 10.5 percent for package express. In January 1980, a further increase amounted to 27 percent for passenger fares and 43 percent for package express. Another increase of 35 percent for passenger fares and 31.8 percent for package express was filed on February 28, 1983, and approved on May 31, 1983. The carrier also states that it would have to double its rates to approach profitability, but that such a sharp increase would discourage ridership. It concludes that ridership is so poor that it cannot be saved by rate increases.

The exhibit which VSL has submitted to show its variable costs purports to set forth income and expenses for its Roanoke-Huntington and Logan-Charleston operations for the 12 months ending December 31, 1982. This exhibit reflects total operating revenues for these operations of $438,019, and total operating expenses of $532,697, for a net operating loss of $94,678. The exhibit also reflects schedule miles of 432,264, which yields variable costs per mile of $1.2323. The carrier further notes that, on the basis of full costs, these runs would show a net loss of $392,273 for the year. No operating subsidies have been available for these services.

VSL notes that vans are used by local agencies to transport elderly persons and that several taxicab companies serve affected communities. The carrier has also submitted an exhibit to show passenger loads on the buses serving the Welch-Huntington and Logan-Charleston routes during March 1983. It notes that there were generally fewer than 10 passengers on any bus at one time, although the exhibit reflects individual instances of loads as high as 19 passengers, and a similar exhibit for April 1983, shows a peak load of 30 passengers on one day's trip. The carrier asserts that approximately 14 passengers a trip are needed to cover variable costs and approximately 22 passengers to cover total costs.

In its objection, the WVPSC acknowledges that no operating subsidies or financial assistance have been offered to VSL, but it argues that discontinuance of the involved regular-route services would have severe adverse effects on the traveling and shipping public, because there are no feasible alternative modes of public transportation available. The WVPSC also argues that the carrier has not made reasonable efforts or employed reasonable management practices to increase revenues or reduce costs.

The WVPSC further attacks the carrier's presentation of revenue and cost figures. It asserts that the carrier has done little to increase its revenues, having been "apathetic" in seeking rate increases. It argues that the additional revenues which will accrue from recent rate increases should be sufficient to cover variable costs. Noting that VSL did not describe the methodology it used to calculate its pertinent revenues, the WVPSC maintains that the figures presented should have included additional interstate revenues from all traffic moving to and from points in West Virginia.

With respect to the carrier's variable cost calculations, the WVPSC again notes that the carrier has failed to identify the methodology and underlying assumptions for the figures it has presented. In particular, it objects to the carrier's failure to identify the specific cost account numbers which have been included or excluded in computing variable costs. Based on the State hearing transcript, it notes that, of the 75.48 cents per mile "Transportation" expense, approximately 50 cents is attributed by VSL to drivers' wages, and yet testimony by the president of the drivers' labor union indicates that top union scale at the time of the hearing was only 35.9 cents.

In rebuttal, VSL asserts that its computation of variable costs is very conservative, resulting in a level which is only 64 percent of total costs. It also notes that the average ticket price paid by passengers on these routes is now only about $6.20, and it expresses the opinion that if rates were more than doubled in an attempt to cover the operating costs, the passengers would not pay such rates. VSL acknowledges that it does very little local advertising of any type, except for Yellow Pages advertisements, and that most of its advertising budget is spent on national advertising, where the greatest number of people can be reached at the lowest per capita cost. As to the possible use of smaller vehicles, it points out that operating costs would actually be comparable to present equipment, especially since depreciation would be accomplished over a shorter time period, that an expensive dual parts supply would be needed, that the smaller vehicles could not be used throughout its system, and yet that the smaller vehicles could not accommodate occasional peak loads. It argues that it is unfortunate that the many people who appeared at the State hearings do not patronize the bus service.

We take official notice, based on timetables published in Russell's Guide,[1] that, before January 4, 1983, VSL operated two daily round trips between Roanoke and Huntington, via Welch, one additional daily round trip between Roanoke and Welch, and one daily round trip between Logan and Charleston. Since March 4, 1983, it has operated two daily round trips between Roanoke and Welch, and one round trip each, daily except Saturdays and Sundays, between Welch and Huntington and between Welch and Charleston. The approximate distances involved are 136 miles between Roanoke and Welch (the route on which service will be retained), 126 miles between Welch and Huntington, and 132 miles between Welch and Charleston.

DISCUSSION AND CONCLUSIONS

The pertinent provisions of the Bus Act raise an implicit presumption that the refusal of a State body to permit the discontinuance of intrastate service over an interstate route is an unreasonable burden on interstate commerce, but this presumption is necessarily defeated if the carrier fails to carry its mandated burden of providing and supporting data and exhibits on the variable costs and revenues associated with the service.

> The exit policy of the Bus Regulatory Reform Act of 1982 is grounded on the premise that interstate carriers should be permitted to discontinue service over routes that do not cover their variable costs. [S. Rep. No. 97-411, 97th Cong., 2nd. Sess. 25].

The statute provides explicitly that "the carrier filing a petition for permission to discontinue or reduce service shall have the burden of proving the amount of the interstate and intrastate revenues received for providing the transportation and the variable costs of providing the transportation." 49 U.S.C. 10935(g)(1). In this proceeding, we find that VSL's petition fails to carry this burden, because its relevant exhibits set forth only total figures that include revenues and costs for services beyond those proposed to be discontinued. There is no separation from these totals of the amounts of revenues and costs attributable to the operations sought to be discontinued and, thus, VSL's figures cannot be considered competent to prove the asserted failure of the revenues from providing the involved transportation to cover the variable costs of providing that transportation.

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[1] Compare, American Buslines, Inc., Discon.-Nebr. and Colo., 121 M.C.C. 415, 417-18 (1975).

Although the proposal here is essentially to discontinue VSL's services west of Welch, and retain service to the east between Welch and Roanoke via Princeton, the carrier's revenue exhibit admittedly overstates revenues by including revenues attributable to all operations in West Virginia, including those between Welch and Princeton. This discrepancy alone does not invalidate the exhibit, however, for if the carrier chooses to overstate its revenues, this is only to its own disadvantage. We could accept overstated revenue figures at face value if compared to proper cost figures, but to pro-rate such overstated revenues on a per-mile basis between the routes sought to be abandoned and the rest of the West Virginia operations would be arbitrary, as revenues are not generated according to the number of miles operated. This is particularly evident in this case, where we are faced with conflicting indications by the carrier itself in its verified statement that the revenue exhibit assumes that retained interstate and intrastate revenues for the services east of Welch, which would still be operated, will be minimal, and yet that in actuality a large part of the interstate revenues for these services would be retained because most of VSL's interstate traffic originates at or is destined to Welch, rather than points in West Virginia west of Welch.[2]

On the other hand, the overstatement of costs is both greater in degree and fatal to applicant's statutory burden of proof. The carrier's cost exhibit covers, on its face, Roanoke-Huntington service, via Welch, and Logan-Charleston service. The figure for schedule miles given on this exhibit (432,264) appears to correspond to an annualized mileage figure resulting from VSL's operating the two daily round trips between Roanoke and Huntington, and the daily round trip between Logan and Charleston, set forth in the timetables in effect during the time period the exhibit represents. Russell's Guide, supra. Mileages and costs covering the one daily Roanoke-Welch roundtrip, set forth in the timetables, appropriately are not included. However, the inclusion of operating costs for services on the Roanoke-Welch portion of the Roanoke-Huntington operation, which are not proposed to be discontinued here, is improper, renders the figures unreliable, and invalidates the cost exhibit. The problem is compounded by the fact that the cost figures have been overstated to an even greater degree than the revenue figures.

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[2] The WVPSC asserts that interstate revenues from service to and from points beyond West Virginia also are relevant in part. We neither accept nor reject this argument at face value, but we do note that it would seem that the proper revenue figures for this case should include all the carrier's revenues for passenger and package express traffic (both interstate and intrastate)moving to or from the points west of Welch.

It is clear that we cannot, in these circumstances, on the face of the exhibits alone, conclude that the "interstate and intrastate revenues received for providing the transportation proposed to be discontinued or reduced are less than the variable costs of providing such transportation," as contemplated by the statute. For example, if we were to apply the carrier's calculation of variable costs per mile ($1.2323) to the approximate annual operating mileage (134,160 miles) based on operations conducted under the current timetables over the routes proposed to be discontinued, the result would yield annual variable costs of $165,325. Even if the operating mileage to be discontinued is computed based on operations under the earlier timetables, it appears that the annual variable costs for the lines actually to be discontinued are still less than $300,000. We do not here hold that either of these methods of calculation is valid or proper for this case; we present them only as examples of why VSL's evidence is questionable and fails to sustain the mandated burden of proof.

The evidence presented by those who are objecting to the discontinuance reveals further discrepancies in the carrier's data and serves to emphasize the unreliability of the figures. Most obvious and significant is the unexplained discrepancy revealed at the State hearings between the "Transportation" expense allocated to drivers' wages, (approximately 50 cents) and the actual maximum wage scale in effect (35.9 cents). Accordingly, we are unable to find that the pertinent revenues in this case are less than the variable costs of providing the services in question. It is clear that Congress intended that a carrier should not be required to continue unprofitable operations which jeopardize its ability to provide service on economically viable routes. Nonetheless, on the existing record we cannot find that the service at issue constitutes an unreasonable burden on interstate commerce. Therefore denial of VSL's request is required. If VSL is able to offer other evidence which will satisfy the statutory requirements, we are willing to reexamine the merits of its case.

Finally, we note that West Virginia's procedures have hampered two attempts to transfer these routes to other carriers. We fail to understand West Virginia's apparent resistance to service from more willing carriers. The State's response to the situation appears self-defeating since it is likely that a locally-based carrier, with lower operating costs, would be able to maintain service over these routes more efficiently than VSL.

We find:

Discontinuance by petitioner Virginia Stage Lines, Inc., of intrastate passenger services between Huntington and Welch, WV, and between Logan and Charleston, WV, over the routes involved in this proceeding, is not consistent with the public interest. The continuation of these intrastate passenger services will not constitute an unreasonable burden on interstate commerce. This decision will not significantly affect either the quality of the human environment or the conservation of energy resources. The petition should be denied.

It is ordered:

The petition is denied.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich
Secretary

(SEAL)

FGC
Attachment 6

BUS DEREGULATION

WHEREAS, the Bus Regulatory Reform Act of 1982, P.L. 97-261, enacted by the 97th Congress has led to mass abandonments of passenger and service routes to rural communities in Tennessee, Mississippi, Arkansas, Kentucky and West Virginia and threatened abandonments throughout the Southern Region; and

WHEREAS, bus route abandonments have adversely affected transportation services to the handicapped, elderly and economically disadvantaged person, as well as, service to industrial and small business interests; and

WHEREAS, congressional conference committee language directing the Interstate Commerce Commission to "afford great weight" to carrier economic factors excludes balanced consideration to many communities where bus service is the last transportation service provider; and

WHEREAS, as a result of this conference committee action, federal guidelines under 49 USC 10935, Sec 16 (g) (1), mandate that "great weight" be given to the revenues generated by said route compared to the variable costs to the company; and

WHEREAS, if a state renders an adverse finding concerning the abandonment of a route, the burden is on the state to make its case within twenty days after the appeal is filed with the Interstate Commerce Commission; and

WHEREAS, the time frame granted for appeal preparation to the aggrieved parties is not sufficient to prepare an adequate case against abandonment of specific routes; and

WHEREAS, in many cases the bus company may file route abandonments all over the state making it difficult to isolate individual concerns with specific routes; and

NOW THEREFORE, BE IT RESOLVED by the Southern Legislative Conference meeting in Savannah, Georgia, July 17-21, 1983, that:

1. Congress amend P.L. 97-261, the Bus Regulatory Reform Act of 1982, to reexamine the criteria which currently guide The Interstate Commerce Commission to include those community, economic and human needs of the service areas;
2. Congress further amend P.L. 97-261 to include language lengthening the time frame states have been accorded to respond to carrier applications for discontinuance of service;
3. Members of the Southern Legislative Conference be invited to testify during U.S. Congressional oversight hearings mandated by the Act;
4. Copies of this resolution be distributed to Senate and House Transportation Committee Chairmen in the SLC region.

FGC
Attachment 7

Submitted by Governor Bob Graham
of Florida
(referred by the Southern
Legislative Conference)

12. BUS DEREGULATION
ADOPTED BY THE SOUTHERN GOVERNORS ASSN.

The Bus Regulatory Reform Act of 1982, P.L. 97-261, enacted by the 97th Congress has led to mass abandonments of passenger and service routes to rural communities throughout the Southern region.

Bus route abandonments have adversely affected transportation services to the handicapped, elderly and economically disadvantaged person, as well as, service to industrial and small business interests.

Congressional conference committee language directing the Interstate Commerce Commission to "afford great weight" to carrier economic factors excludes balanced consideration to many communities where bus service is the last transportation service provider.

As a result of this conference committee action, federal guidelines under 49 USC 10935, Sec 16 (g) (1), mandate that "great weight" be given to the revenues generated by said route compared to the variable costs to the company.

If a state renders an adverse finding concerning the abandonment of a route, the burden is on the state to make its case within twenty days after the appeal is filed with the Interstate Commerce Commission.

The time frame granted for appeal preparation to the aggrieved parties is not sufficient to prepare an adequate case against abandonment of specific routes.

In many cases the bus company may file route abandonments all over the state making it difficult to isolate individual concerns with specific routes.

It is recommended by The Southern Governors' Association that:

1. Congress amend P.L. 97-261, the Bus Regulatory Reform Act of 1982, to re-examine the criteria which currently guide The Interstate Commerce Commission to include those community, economic and human needs of the service areas;
2. Congress further amend P.L. 97-261 to include language lengthening the time frame states have been accorded to respond to carrier applications for discontinuance of service;
3. members of the Southern Governors' Association be invited to testify during U.S. Congressional oversight hearings mandated by the Act; and,
4. copies of this resolution be distributed to Senate and House Transportation Committee Chairmen in the SGA region.

FGC
Attachment 8
Page 1 of 3

PROPOSED AMENDMENTS TO THE BUS REGULATORY REFORM ACT OF 1982

Route Abandonments

Sec. 1. Section 10935(a) of title 49, United States Code, is hereby repealed and the following language is inserted in lieu thereof:

"(a) Within 60 days of the effective date of this Act, and by March 1 of each year thereafter, each motor common carrier of passengers having intrastate authority under the laws of a State and interstate authority under a certificate issued under Section 10922 of this subchapter shall submit a list of routes which it has under consideration for discontinuance within the following twelve months to the Commission and to each state regulatory agency having jurisdiction in the States in which the carrier operates. Hereafter such routes shall be referred to as Category A routes.

"(b) In the event that no state regulatory agency exercises jurisdiction over motor common carriers of passengers in a particular State, listings of Category A routes for that State shall be submitted to the Governor of the State.

"(c) A motor common carrier of passengers may amend its list of Category A routes effective on the first day of any subsequent month.

"(d) No less than 30 days after registering a route as a Category A route with the Commission and the appropriate state regulatory agency, a bus company shall file a Notice of Intent to discontinue service on any Category A route with the state regulatory agency exercising jurisdiction over service discontinuances and with the Commission.

"(e) Each Notice of Intent to abandon a Category A route shall include:

(1) The number of passengers carried on the route during the previous twelve month period;

(2) The amount of passenger and freight revenue generated on the route during the previous twelve month period; and

(3) Other information which the Commission may specify by regulation.

"(f) No less than 60 days nor more than 90 days after filing a Notice of Intent to abandon a Category A route with the appropriate state regulatory agency, a motor common carrier of passengers may petition such agency for authority to discontinue intrastate transportation pursuant to the laws of that State.

"(g) If the request made under subsection (f) of this section is denied (in whole or in part) or if the state agency exercising jurisdiction has not acted by the 90th day after the carrier made the request, the carrier may petition the Commission for such permission."

Sec. 2. Section 10935(e)(1)(A) of the title 49, United States Code, is amended by adding at the end thereof the following sentence: "The Commission shall not grant a bus company authority to discontinue service over a route which has not been registered with the Interstate Commerce Commission and the appropriate state regulatory agency as a Category A route".

Sec. 3. Subsection 10935(e)(1)(A) is amended by deleting the words, "or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays)".

Sec. 4. Subsection 10935(e)(2)(A) is amended by deleting the words, "or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays)".

Sec. 5. (a) Section 10935(g)(1) is amended by striking out "accord great weight to" and inserting in lieu thereof the words "take into account".

(b) Section 10935(a)(1) is amended by striking out " or reduce" after the words "to be discontinued".

Sec. 6. Section 10935(g)(2)(C) is amended by inserting, "the Commission shall accord great weight to" after the word "point,".

Sec. 7. Section 10935(h) is hereby repealed.

Sec. 8. Subsections 10935(b)-(i) are redesignated (h)-(n).

Market Entry

Sec. 9. (a) Section 10922 (c)(1)(A) of title 49, United States Code, is amended by adding after the words "the issuance of the certificate," the words "and after close consultation with the affected States,".

(b) Section 10922(c)(1)(A) is further amended by adding at the end thereof: "The Commission shall accord great weight to the counsel and advice of the affected States regarding applications for authority filed pursuant to this section".

(c) Section 10922(G) is amended by adding at the end thereof: "The Commission shall officially notify each State affected of any final action which it shall take in granting new authority under this Section.

National Transportation Policy

Sec. 10. Section 10101(a)(3) is amended by striking out "; (B) to provide Federal procedures" and all that follows through the period at the end of such subsection and inserting in lieu thereof the following: "and to coordinate State and Federal regulatory actions to ensure the provision of bus service to rural communities which have no other means of public transportation."

State Regulation of Rates and Practices

Sec. 11. Section 11501(e)(5) of title 49, United States Code, is hereby amended by inserting before the words "or relating to the implementation" the following:", except where the bus service provided is two round trips per day or less (excluding Saturdays and Sundays),".

Sec. 12. Section 11501 of title 49, United States Code, is amended by inserting the following as new section (f) and redesignating "(f)" as "(g)":

"(f) It is the sense of Congress that the Interstate Commerce Commission, the States, and the national associations representing State departments, agencies, and instrumentalities should work in close harmony and cooperation in developing innovative regulatory approaches and procedures to ensure the preservation of bus service to areas which are threatened with the total loss of public transportation service.

FGC
Attachment 9

RATE CASE PETITIONS UNDER BUS ACT §17
(11/19/82 10/19/83)

GRANTED	16[1]
DISMISSED	2[2]
DENIED	0
PENDING	2
TOTAL FILED	20

EXIT PETITIONS UNDER BUS ACT §16
(11/19/82 10/19/83)

GRANTED	10
DISMISSED	1[2]
DENIED	1[3]
PENDING	8
TOTAL FILED	20

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[1] In one case (Missouri) relief was partially granted.

[2] Lack of jurisdiction.

[3] West Virginia - Virginia Stage Lines (Trailways, Inc.) insufficient cost and revenue evidence.

FGC
Attachment 10

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

MC-59238 (Sub No. 41)

VIRGINIA STAGE LINES, INC.
1200 Eye Street, N.W.
Washington, D.C. 20005

EXIT PETITION: WEST VIRGINIA
Logan, W.V. - Charleston, W.V.
Logan, W.V. - Welch, W.V.

OBJECTIONS OF THE WEST VIRGINIA PUBLIC SERVICE COMMISSION TO THE PETITION OF VIRGINIA STAGE LINES, INC., FOR PERMISSION TO DISCONTINUE BUS SERVICE IN WEST VIRGINIA

June 30, 1983

Franklin G. Crabtree and
S. Thornton Cooper
Counsel for
West Virginia Public Service
Commission
State Capitol
Charleston, W.V. 25305
(304) 348-2084

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

MC-59238 (Sub No. 41)

OBJECTIONS OF THE WEST VIRGINIA PUBLIC SERVICE COMMISSION TO THE PETITION OF VIRGINIA STAGE LINES, INC., FOR PERMISSION TO DISCONTINUE BUS SERVICE IN WEST VIRGINIA

BASIS FOR OBJECTIONS

Comes now the West Virginia Public Service Commission (WVPSC or Respondent) and states:

1. These objections are being filed pursuant to 49 USC §10935 and 49 CFR §1169 in opposition to the petition of Virginia Stage Lines, Inc., (VSL or Petitioner) to abandon certain intrastate regular-route passenger service in the State of West Virginia;

2. To be best of Respondent's knowledge, the Petitioner does not receive nor has not been offered any relevant operating subsidies nor financial assistance to support the service which it proposes to abandon;

3. Should the Petitioner obtain the relief it seeks, the resulting abandonment of regular route service would have severe adverse effects on the traveling and shipping public located along the subject routes since many of these persons have no feasible alternative means of public transportation (as more fully set forth below);

4. As more fully set forth below, assuming arguendo that revenues from providing the service in question may not meet Petitioner's related variable costs, Respondent believes Petitioner has not made reasonable efforts or employed reasonable management practices designed to increase said revenues or reduce said costs.

IN CONSIDERATION WHEREOF, your Respondent urges this Honorable Commission to consider these pleadings and agruments attached hereto, and to deny Petitioner's request for permission to abandon certain interstate and intrastate regular-route bus service in West Virginia for the reasons set forth herein.

VERIFICATION

"I, Franklin G. Crabtree, verify under penalty of perjury under the laws of the United States of America, that the information in this statement is true and correct. Further, I certify that I am qualified and authorized to file this statement." (See 18 USC 1001 and 18 USC 1621 for penalties.)

Franklin G. Crabtree 6-29-83
Signature Date

State of: W. Va.
County of: Kan.
Taken, sworn to, and subscribed before me this the 29 day of June, 1983

Vito Perriello
Notary Public

My Commission expires July 24, 1988, 19_

NOTES

For purposes of transcript citation, WVPSC will follow the designations in the Hearing Examiner's Decision of March 21, 1983, to-wit:

Vol. I - Welch - January 25, 1983
Vol. II - Logan - January 27, 1983
Vol. III - Charleston - January 31, 1983
Vol. IV - Charleston - February 10, 1983

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Attachments

1. - - Letter from Chairman Howard dated January 21, 1983.

2. - - Congressional Report (exerpt) - House, November 19, 1981.

3. - - WVPSC Order May 9, 1983, in M.C. Case Nos. 21686 & 21698.

Transcripts

Vol. I	-	Welch	-	January 25, 1983
Vol. II	-	Logan	-	January 27, 1983
Vol. III	-	Charleston	-	January 31, 1983
Vol. IV	-	Charleston	-	February 10, 1983

I. STATEMENT OF THE CASE

On November 19, 1982, Virginia Stage Lines, Inc., a corporation, Dallas, Texas, filed a petition with the WVPSC to discontinue motor bus transportation in the state of West Virginia, under a revised time schedule designated VSL Schedule 5-8, cancelling VSL 5-7, to WVPSC Schedule 46, cancelling WVPSC Schedule 45, as follows:

Run 5009 - 11:15 a.m. Roanoke-Huntington is renumbered 5059 and service between Bluefield and Huntington is discontinued due to low patronage.

Run 5401 - 8:00 a.m. Logan-Charleston will operate daily except Saturdays, Sundays and holidays due to low patronage.

Run 5003 - 4:45 a.m. Roanoke-Huntington will operate between Roanoke and Welch.

Run 5103 - 8:55 a.m. will provide service from Welch to Huntington daily except Saturdays, Sundays and holidays due to low patronage.

Run 5014 - 9:30 a.m. Huntington-Roanoke is renumbered 5054 and service between Huntington and Bluefield is discontinued due to low patronage.

Run 5002 - 3:30 p.m. Huntington-Roanoke will operate from Welch to Roanoke leaving Welch at 7:50 p.m. Run 5102 will provide service from Huntington to Welch daily except Saturdays, Sundays and holidays due to low patronage.

Run 5412 - 3:30 p.m. Charleston-Logan will operate daily except Saturdays, Sundays and holidays due to low patronage.

and on November 29, 1982, VSL filed Supplement No. 1 to VSL Schedule 5-8 cancelling VSL Schedule 5-7, to WVPSC Schedule 46, cancelling WVPSC Schedule 45, containing the following changes:

> Run 5103 - 8:55 a.m. (ESSH) Welch-Huntington to serve Pineville and Oceana in lieu of Iaeger and Gilbert.

and on November 29, 1982, it filed Supplement No. 2 to VSL Schedule 5-8, to WVPSC Schedule 45, containing the following changes:

> Runs 5401, 5103, 5102 and 5412 - will operate daily (Monday through Friday) except Saturdays and Sundays.

By WVPSC order entered on December 17, 1982, VSL was made respondent to this proceeding and the time schedule changes affecting Runs 5009, 5014, 5002 and 5003 were suspended and the use thereof was deferred until 12:01 a.m., March 20, 1983.

On January 3, 1983, VSL filed a revised time schedule designated VSL Schedule 5-10, cancelling VSL Schedule 5-9, to WVPSC Schedule 48, cancelling WVPSC Schedule 47, issued December 29, 1982, containing the following changes and discontinuing the following runs, effective February 10, 1983:

Run 5103 -	8:55 a.m. Welch-Huntington
Run 5102 -	3:30 p.m. Huntington-Welch
Run 5401 -	8:00 a.m. Logan-Charleston and
Run 5412 -	3:30 p.m. Charleston-Logan

By WVPSC order entered on January 5, 1983, the Petitioner was required to give notice of said application and of the time and place of hearing thereon by publishing a copy of this order at least twice in a newspaper published and of general circulation in each of the cities of Princeton, Beckley, Charleston, Bluefield, Welch, Iaeger, Pineville, Logan, Madison and Huntington. The hearing was set for January 25, 1983, in Welch, West Virginia.

By WVPSC order entered on January 19, 1983, additional hearings were scheduled to be held in the city of Logan on January 27, 1983, and in the city of Charleston on January 31, 1983. Petitioner was required to give notice of these hearings by publishing a copy of the order at least once between the date of the order and January 27, 1983, in newspapers published and of general circulation in Logan and Kanawha counties.

The hearings were held as scheduled in the town of Welch, McDowell County, on January 25, 1983; in the town of Logan on January 27, 1983; in the Commission's Hearing Room at the Capitol in the city of Charleston on January 31, 1983, and on February 10, 1983. The Petitioner was represented by John H. Tinney, Esquire, David P. Ferretti, Esquire, David D. Thomas, Esquire, and George W. Hanthorn, Esquire. The Commission's Staff was represented by Franklin G. Crabtree, Esquire, and Thornton Cooper, Esquire. Intervenors were represented by Norman Googel, Esquire, and Teresa McCune, Esquire, of the Appalachian Research and Defense Fund. Some fifty-one public witnesses offered testimony in opposition to the proposed schedule changes and/or abandonment of service.

On January 28, 1983, WVPSC filed a civil action against VSL in the Circuit Court of McDowell County, for the purpose of enjoining VSL from violating the Commission orders of December 17, 1982, and January 5, 1983. On that same date VSL removed the case to the United States District Court for the Southern District of West Virginia, Civil Action No. 83-1010. On January 31, 1983, a hearing was held and a temporary restraining order was issued to enjoin VSL from further violation of WVPSC order. On February 10, 1983, a second hearing was held on WVPSC's Motion for a Preliminary Injunction. On March 1, 1983, an order was entered by the U.S. District Court which enjoined VSL from effectuating any schedule changes and/or discontinuances of service so filed by VSL in M.C. Case Nos. 21686 and 21698.

On March 21, 1983, Hearing Examiner Maynard D. McDonnell issued a Hearing Examiner's Recommended Decision which denied the proposed schedule changes and discontinuance and/or abandonment of service by VSL and ordered VSL not to reduce or maintain a reduced level of its intrastate passenger bus service between and among the points of Bluefield, Welch, Pineville, Oceana, Iaeger, Gilbert, Man, Logan, Chapmanville, West Hamlin, Salt Rock, Huntington and

Charleston, and all intermediate points along said routes of operation in either direction below the minimum level at which any passenger may on any day, Monday through Friday, travel from any one of the aforementioned points and places in either direction to any other point and place on the respective routes of operation. (Petitioner's Appendix A-4, p. 30).

On April 5, 1983, VSL filed exceptions to the Hearing Examiner's Recommended Decision of March 21, 1983, and a brief in support thereof, pursuant to the provisions of West Virginia Code §24-1-9. On May 3, WVPSC entered an order affirming the Recommended Decision. (Petitioner's Appendix A-4).

On May 9, 1983, WVPSC issued its Opinion in Support of Order Affirming Hearing Examiner's Recommended Decision. (Respondent's Attachment 3).

On June 10, 1983, VSL petitioned this Commission for relief from said orders and permission to abandon the regular route service which was the subject of the case below. VSL's petition was filed pursuant to the Bus Regulatory Reform Act of 1982, and, more specifically, pursuant to 49 USC §10935 and 49 C.F.R. §1169.

In Petitioner's Basis For Petition, Paragraph 10, it alleges that all parties of record, as well as all affected counties and municipalities, were served with its petition. However, Petitioner's Certificate of Service indicates that county governments of Kanawha and Boone were omitted from its service. (Petition, p. 12). Respondent asserts that if service was not made to these counties, VSL's petition fails to conform with 49 CFR §1169.4 (h) (3) and 49 C.F.R. §1169.6 (a) (3).

II. APPLICABLE LAW

Since the routes in question were instituted prior to August 1, 1982, this Commission must deny Petitioner's request for relief from WVPSC's decision if it finds:

> 1. That such discontinuance or reduction is not consistent with the public interest; *or*
>
> 2. That continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce. 49 USC §10935(e)(1)(A) (emphasis added).
>
> In performing this analysis: "the Commission shall accord great weight to the extent to which interstate and intrastate revenues received for providing the transportation proposed to be discontiued or reduced are less than the variable costs of providing such transportation, including depreciation for revenue equipment. For purposes of the preceding sentence, *the carrier filing a petition for permission to discontinue or reduce service shall have the burden of proving the amount of interstate and intrastate revenues* received for providing the transportation." 49 USC §10935(g)(1) (emphasis added).

The Act further provides that this Commission shall determine and give appropriate weight to the following considerations:

> A. The National Transportation Policy of §10101 of this Title:
>
> B. Whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or

> reduced from a financially responsible person (including a governmental authority); and
>
> C. In the case of a petition to discontinue transportation to any point, whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available. 49 USC §10935(g)(2) (emphasis added).

In pertinent part the National Transportation Policy requires the ICC, in regulating transportation by motor carrier by bus, to promote competitive and efficient transportation services in order to:

1. Meet the need of shippers, passengers and consumers;
2. Allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;
3. Allow the most productive use of equipment and energy resources;
4. Enable efficient well managed carriers to earn adequate profit, attract capital, and maintain fair wages and working conditions;
5. Provide and maintain service to small communities and small shippers and intrastate bus companies;
6. Provide and maintain commuter bus operations;
7. Improve and maintain a sound, safe, and competitive privately owned motor carrier system;
8. Promote greater participation by minorities in the motor carrier system; and

> 9. Promote intermodal transportation; ... .
> (49 USC §10101(2) (emphasis added).

Accordingly, Respondent submits that its objection could be sufficient cause to deny this Petition if it demonstrates to this Commission either that the proposed abandonments are inconsistent with the public interest, or that continuance of the subject routes will not constitute an unreasonable burden on interstate commerce. Respondent's interpretation of the disjunctive nature of this "dual exit standard" in 49 USC §10935(e)(1)(A) is consistent with the interpretation given this section by James J. Howard, Chairman of the House Committee on Public Works and Transportation. Chairman Howard's interpretation appears in a letter dated January 25, 1983, to Congressman Nick J. Rahall, II, in response to an earlier inquiry by Congressman Rahall concerning the instant case then pending before the WVPSC, to-wit:

> "Note, this test is stated in the disjunctive, therefore, persons opposing this discontinuance can prove either point and succeed in their objection. This point was strongly recommended by you and others who were cautious in their approach to the legislation in order to assure service to small communities. By adopting this dual exit standard for service commenced before or after (sic) August 1, 1982, the Act provides more

> protection to existing service than to new service, the reasoning being that it was a desirable approach to encourage new service by carriers." (Attachment 1, p. 1) (emphasis added).

Concerning the weight of the public interest test vis-a-vis its economic counterpart in the dual exit standard:

> "... the intent of this Bill is to insure that the public interest test has an equal emphasis with economic considerations and the ICC interpreting otherwise would be a regulatory charade. The Act does not create, and the Public Works and Transportation Committee would not condone such a charade. I am certain that will be one of the areas where we will be monitoring closely in oversight hearings." (Attachment 2, p. 2, Congressional Record-House, Nov. 19, 1981) (emphasis added).

The colloquy between Congressmen, as presented on the Congressional Record in Attachment 2, further evidences legislative intent to "build-in" to the Act special protection for rural and small communities such as those affected by this Petition.

Congressman Clinger:

* * *

> "In this legislation it is my understanding we have safeguards which have been mentioned here and which have been inserted

> directly into the statute to address this concern...."

* * *

Congressman Shuster:

* * *

> "In the national transportation policy it is explicitly - not implicitly, but explicitly - stated that ICC have as a goal providing and maintaining service to small communities; ...
>
> "In regard to exit, the bill specifically requires that the ICC shall consider whether a community is losing its last bus service to that particular area." (Attachment 2, p. 3) (emphasis added).

* * *

Clearly, then, in enacting the Bus Act Congress intended to give equal weight to both parts of the "dual exit standard" when considering exit petitions. Congress further spelled out its interpretation of the public interest standard, as confirmed on the Congressional Record, both by including by reference the National Transportation Policy and by specifying that "appropriate weight" be given to proposed abandonments of the last available public transportation source in the subject areas.

With the proper scope of review in mind, we now turn to the bases for Respondent's objections to this Petition and Respondent's arguments thereon.

III. PUBLIC IMPACT

THIS COMMISSION SHOULD DENY VSL'S PETITION SINCE THE PROPOSED ABANDONMENT OF SERVICE WOULD SIGNIFICANTLY HARM THE INTEREST OF THE TRAVELING AND SHIPPING PUBLIC WHO LIVE AND WORK IN THE AFFECTED COMMUNITIES.

On Page 9 of Petitioner's verified statement, Mr. Myers states:

> "I have no doubt that the West Virginia Public Service Commission will argue that since many public witnesses appeared in opposition to the discontinuance proceeding, the Interstate Commerce Commission should find that the public interest requires the continued service. It is indeed unfortunate that the passengers who appear at public hearings do not patronize the bus". (emphasis added).

Mr. Myers is indeed correct that WVPSC asserts that the public interest demonstrated herein requires that the subject service be maintained. Mr. Myers is sadly mistaken, however, in his apparent belief that the persons who appeared at the hearings in this case do not patronize Petitioner's service. Perhaps Mr. Myers' verified statement would have been less dogmatic on this issue had he attended one of the four hearings in this case and had he heard the testimony of some 51 witnesses who protested abandonment of the only means of intercity transportation remaining in their communities.

Of the numerous public witnesses appearing at hearings below in opposition to Petitioner's abandonment request, most acknowledged VSL's need to maintain a financially viable operation. However, many of these persons were not convinced that VSL had made a good faith effort to employ management practices designed to promote service.

People from all along the routes in question expressed concern with VSL's withdrawal of their only feasible means of public transportation. In many cases they predicted harmful personal and economic consequences if VSL's proposals were successful. Almost without exception, protestants indicated that they had no objection to further rate increases or the use of smaller vehicles. (Vol. I, p. 49, p. 59, p. 75, p. 111, p. 115, p. 122, p. 126; Vol. II, p. 73, p. 93, p. 98, p. 106, p. 121, p. 127, p. 133, p. 138, p. 143, p. 148, p. 162, p. 198: Vol. III, p. 44; Vol. IV, p. 58).

To be more specific, the record clearly indicates that many of these persons rely on VSL's passenger service, particularly elderly persons, for transportation to receive medical attention. (Vol. I, p. 46, p. 59; Vol. II, p. 85, p. 97, p. 129, p. 150, p. 173, p. 177, p. 181, p. 197; Vol. III, p. 19). Despite the relatively large crowd of protestants appearing at the hearing in Welch, according to one witness more senior citizens wanted to come, but were uncertain about the availability of public transportation to and from the hearing. (Vol. I, p. 54). The sentiments of several senior citizens in the Iaeger area were presented by Martha Wordaman, a Catholic Sister who is President of the Catholic Community Services Southern Region. (Vol. I, pp. 98-105).

Certain elderly protestants stated they were either unable to drive a personal automobile for medical reasons, or that they could not afford that more expensive means of transportation. (Vol. I, p. 46).

According to Ms. Hilda Taylor, County Clerk of McDowell County:

> "We would be completely paralyzed without this public transportation that Trailways provides. We have no taxicabs; we have no trains; we have no airplanes; and we just would not have any transportation. Now I have talked to people that have come into the office that have had -- when they couldn't get bus connections for business, they have had to pay people, private people that own cars, tremendous amounts of money just to come into town to do a little business. Most of these people are elderly people on fixed incomes and they cannot afford this". (Vol. I, p. 57-58).

Ms. Susan Weber, Pastoral Associate, with the Catholic Diocese in Chapmanville, appeared at the Logan hearing on behalf of senior citizens in her outreach area. Importantly, Ms. Weber pointed out the importance of public transportation for senior citizens who wish to attend and participate in public hearings at the Capitol in Charleston, to wit:

> "There is one thing that hasn't been mentioned that I am concerned about and that is with the economy and the situations in the community, being what it is at this time, I think our responsibility to speak, in terms of legislation, is important. Often public hearings, especially in the daytime, are in Charleston.
>
> "I know there are several issues that are going to be in the Legislature this year that I am hoping to get a group of people together and go up to Charleston to kind of talk about and have our voices heard there because I think the most important thing is that we, who are affected by the decisions, can be a part of the decisions.
>
> "Those decisions made in Charleston, our Capitol, we can only be a part of them if we can get there. I definitely would use the bus service to do that. Once groups got together on the issues, I would use the bus service for that. I think it is important that we are able to do that". (Vol. II, pp. 132-133).

In addition to the concerns specifically addressed by and on behalf of senior citizens, the record clearly demonstrates that the broader issue of public health will be adversely affected by a favorable ruling on this Petition. At least seven hospitals in the affected area depend on Petitioner's package express service for shipments of blood and blood components from the regional American Red Cross headquarters in Huntington. (Vol. I, p. 31; Vol. II, p. 53, p. 58, p. 69). Mr. Charles Karchnik, Director of Product Management at the Huntington office stressed the importance and his frequent use of Petitioner's timely package express service since other courier services are unable to deliver these components within their relatively short life span. According to Mr. Karchnik, this most expedient service may be life-saving in some instances. (See Vol. I, pp. 32-33). In some cases Mr. Karchnik's only other viable means of timely transportation of blood is by emergency police runs which he uses only in the case of dire emergency. (Vol. III, pp. 37-52).

The dependence of the medical community on Petitioner's service goes beyond the needs for shipments of blood and blood components. Some witnesses from the health field reported reliance on package express service for shipments of drugs and medical supplies. (Vol. I, p. 87; Vol. II, p. 95). Additionally, one witness felt that his ability to recruit medical personnel depended in part on Petitioner's passenger service. (Vol. I, p. 88).

Furthermore, Ms. Carolyn Stuart testified on behalf of her neighbor, a kidney dialysis patient, who urgently depends on package express to transport medical supplies from Charleston to Welch. (Vol. I, pp. 112-113).

In the area of mental health, one witness spoke of the need of certain members of the community for transportation to a domestic violence shelter in Huntington. (Vol. II, p. 136).

In the words of another witness, the need for Petitioner's service rises above and beyond the level of occasional transportation:

> "... a lot of times in dealing with the question of transportation, (people) talk about it like it is a luxury, like it is something extra, you know, that people can just use to go see someone, which doesn't make it not a necessity anyway, but to the people from the Public Service Commission and to Trailways, I just wanted to say, you know, my feelings. I think it is a lot of other peoples' feelings (sic) that transportation is not a luxury; it is a necessity. It is what people need, just as well as they need clothing, in a lot of cases, and sometimes more, sometimes more urgently." (Vol. II, p. 186).

One witness' testimony was of special interest to the Respondent. Mr. Tim Babcock, a teacher of the hearing-impaired in McDowell County relies exclusively on Petitioner's passenger service for intercity transportation. Mr. Babcock is visually-impaired himself, and unable to get a driver's license. It further appears Mr. Babcock is the only teacher of the hearing-impaired in McDowell County, and that the County is obligated by federal law to provide a teacher with his speciality if the need exists. Because of the uncertainty created by Petitioner's recent schedule changes as well as this Petition, Mr. Babcock is currently considering relocation to an area with more dependable public transportation, and McDowell County stands to lose its only qualified teacher of the hearing-impaired. (Vol. I, pp. 123-131).

McDowell County's need to attract and retain qualified educators, and its corresponding need for reliable public transportation was echoed by Ellis Ray Williams, Principal of Elkhorn Junior High School in Welch. According to Mr. Williams:

> "This place is going to be choked off completely; it is going to die without transportation. You don't have air transportation in; you don't have rail transportation in; you don't have water transportation in; and now they are going to cut off bus transportation." (Vol. I, pp. 133-135).

Perhaps just as importantly, many witnesses appeared at both Welch and Logan hearings to express their concern for the adverse impact on the economy which would correspond with the proposed abandonment of bus service in these subject areas. Representatives of area Chambers of Commerce described the ripple effect in the area economy which would result from abandonment. These effects include lower retail sales and reduced employment opportunities. (Vol. I, p. 93, p. 122; Vol. II, p. 146-147).

Several witnesses reported reliance on Petitioner's service for the shipment of parts and supplies needed to support area businesses including mining operations, retail stores, banks and newspapers. (Vol. I, p. 17, p. 19, p. 25, p. 35, p. 40, pp. 82-83, p. 122; Vol. II, p. 53, p. 106, p. 146; Vol. III, p. 34).

Mr. Lewis Capaldini, a Logan banker and businessman, critized VSL for its inability to respond reasonably to the economic needs of the community:

> "I submit and acknowledge that Trailways does have a responsibility to its shareholders to provide a maximum return on investment. Part of that responsibility, even to those shareholders, is to make good situations work. I feel there is a good situation here in Logan. I contend, as one person, that Trailways has not exhibited very much vigor, commitment or business intelligence.
>
> "Marketing-communications, for example, is nonexistent. When was the last time you saw an ad by Trailways, or the last time that you saw schedules prominently posted, or that you saw schedules distributed throughout the community.
>
> "Logan deserves a more responsive set of actions from Trailways, a set of actions that ought to make good business sense, but also one that indicates a sense of

> societal responsibility as well". (Vol. II, pp. 105-106).

With respect to the adverse economic conditions already existing in McDowell County, State Delegate Rudolph J. Murensky was most articulate. According to Delegate Murensky many area businesses are already operating on a marginal basis, and if their cost of business is substantially increased by having to resort to much more expensive, time-consuming means of transportation, they may succumb. (Vol. I, pp. 64-72).

Perhaps the final straw to be placed on the proverbial camel's back may be the business failure of Petitioner's own commission agent in Welch who may be unable to withstand the economic crunch if intrastate service only between Bluefield and Welch is maintained. (Vol. II, p. 54).

Respondent submits one other valid consideration in assessing the adverse economic impact of Petitioner's proposed abandonment. According to Thomas C. Meadows, President of Local 1544, Amalgamated Transit Union, recent service reductions combined with the proposed abandonment will cause 11 of 13 VSL drivers to be "furloughed". Currently eight of 13 drivers operate buses over Petitioner's routes within West Virginia. (Vol. IV, p.54).

IV. FINANCIAL IMPACT

A. PETITIONER HAS FAILED TO MEET ITS STATUTORY BURDEN OF PROVING EITHER REVENUES OR COSTS FOR PURPOSES OF APPLYING THE "BUS ACT" ANALYSIS, AND, ACCORDINGLY, ITS PETITION SHOULD BE DENIED.

- Revenues -

Importantly, Petitioner has failed to meet its burden of "proving the amount of interstate and intrastate revenues received for providing the transportation" as required by 49 USC §10935(g)(1). Instead it has attached to its Petition a sheet (Appendix B-3) purporting to establish revenues generated by the subject service. Its "explanation" for this appendix gives no indication of its computation methods.

Notwithstanding this failure of proof Petitioner's own calculations show operating revenue of $444,000 for interstate and intrastate service over the subject routes during calander year 1982. (Petitioner's Appendix B-3).

However, the record discloses that Petitioner has done little over the past few years to increase these revenues. At hearing in this case Petitioner was questioned on its failure to file for rate relief since November, 1979. Its response is indicative of its apathetic attitude toward its West Virginia operations:

> Q. "Do you know why Virginia Stage Lines has not sought a rate increase since 1979?"
>
> A. "No, I really don't know. I don't have a specific answer for that. There are relatively small dollars involved so we really have not had a real special attempt to get one." (Vol. IV, p. 17).

Oddly enough twelve days later, on February 22, 1983, Petitioner filed with WVPSC for a 25% increase in passenger rates, and for a 31.8% increase in package express rates. These increases were granted in full on May 31, 1983. (Petition, p. 6).

Based on Petitioner's revenue calculations in its Appendix B-3, this rate increase should generate additional passenger revenue of approximately $41,200 and additional package express revenue of $7,100, for total additional revenues of approximately $48,300. When these revenues are combined with the cost adjustments discussed below, revenues should be sufficient to cover variable costs.

Despite Petitioner's failure to demonstrate to this Commission its methodology and assumptions in determining revenue, testimony below suggests that not all applicable interstate revenue was included in the calculation. (Vol. III, p. 134). Respondent asserts that Petitioner should have included revenue in its calculation from all traffic to and from points outside of West Virginia to and from points within. Considering additional revenues so reflected as well as the additional revenue generated by Petitioner's rate filing, Respondent submits that the revenue disparity claimed by Petitioner is marginal, at best.

Furthermore, despite the bleak financial picture sketched by Petitioner, in 1982 VSL enjoyed an after-tax operating ratio of 91.4% and net income of $1,091,465. This becomes even more significant when compared to Trailways, Inc., whose net income for 1982 was only $3,098,000. (Vol. III, pp. 123-128). Clearly VSL is one of Trailways' healthiest subsidiaries.

- Costs -

The revenue/cost disparity becomes even more insignificant when Petitioner's "variable" costs are examined. (Petitioner's Appendix B-5). Petitioner has again failed to identify for this Commission its methodology and underlying assumptions in computing costs.

However, it appears by their very characterizations, portions of these costs are not includable for purposes of

"Bus Act" analysis.

In the Equipment Maintenance and Garage account Petitioner has not shown whether certain non-variable costs have been eliminated. These costs include, for example, account numbers 4110, 4121, 4122, 4128, 4131, 4132, 4191 and 4196.

Of the $0.7548 per mile Transportation expense, approximately $.50 is attributed to driver's salaries by Petitioner. (Vol. III, p. 136). This assertion came as a surprise to Thomas E. Meadows, president of Local 1544, Amalgamated Transit Union, who testifed that top union scale for drivers was $0.359 at the time of the hearing. (Vol. IV, p. 60). VSL offered no explanation for this discrepancy. Respondent submits that this one adjustment could have a significant impact on Petitioner's Transportation expense which it claims to be $326,273.

From the evidence submitted in this Petition, neither the WVPSC nor the Commission can analyze the components in VSL'S station expense. All accounts contained in this category should be included at actual cost (except account 4314), since the use of system averages would likely inflate expenses for marginal routes like the ones in question.

Respondent further challenges VSL'S inclusion of certain costs within the Insurance and Safety category. Generally speaking there is little if any relationship between these expenses and the volume of traffic or service provided in West Virginia. Accordingly, to the extent of their inclusion, the following accounts should be excluded: 4510, 4520, 4530, 4541, 4546, 4550, 4560, 4570 and 4580.

None of the accounts grouped under Administrative should be includable for this analysis since they have no direct relationship to either traffic or service, but represent the organizational cost of doing business. They will not vary despite substantial changes in traffic or service.

Petitioner's Depreciation expense is also apparently unadjusted by excludable accounts relating to depreciation of assets which are not revenue producing, and thus not specifically authorized by the Bus Act. Since this expense is not normally considered a variable cost, only depreciation expense of revenue equipment should be included, and this expense should be adjusted by removing the following accounts: 5011, 5031, 5041, 5051, 5061, 5071, 5081 and 5091.

In respect to Operating Taxes & Licenses, Petitioner's submisssion makes it impossible to determine whether only variable, and not just avoidable, costs have been included. Again Respondent, and the Commission, have no basis for assessment of this item.

B. THE PETITIONER SHOULD NOT BE PERMITTED TO ABUSE THE "BUS ACT" BY EMPLOYING ITS RELAXED EXIT STANDARDS TO EXTRICATE PETITIONER FROM A SITUATION CREATED BY FAILURE TO EMPLOY REASONABLE MANAGEMENT PRACTICES.

In the decision rendered below the Hearing Examiner concluded that the Petitioner has made "little effort if any" to mitigate the loss position presented to support its proposed abandonment:

> The record is replete with testimony indicating that the Respondent has failed to sufficiently inform passengers and potential passengers, as well as shippers and potential shippers, of services available to them. Indeed, the several schedule changes filed with this Commission in late 1982 undoubtedly had a negative impact on ridership as indicated in Respondent's [sic] traffic survey conducted the first two weeks of January, 1983. (Appendix A-4, p. 28).

The Examiner's conclusion in this regard is fully substantiated by the evidence below indicating that Petitioner's routes were not scheduled for optimum usage. (Vol. I, p. 60, p. 71, pp. 81-82, p. 102, p. 110, p. 122, p. 126, p. 133, p. 138; Vol. II, p. 47, pp. 50-52, p. 54, p. 68, pp. 74-75, pp. 105-106, p. 131, p. 137, p. 142, p. 153; Vol. IV, p. 58, pp. 71-74).

Thomas E. Meadows, Union Local President and VSL driver commented at length on Petitioner's scheduling:

> Q. "Let me try to repeat or rephrase. In your opinion, are the current schedules

> being operated at maximum ridership?
>
> A. "No, sir.
>
> Q. "Why is that?
>
> A. "Because of the changes that they have made, the people can't get to where they are going at the times they have been operating for whatever business purposes or whatever school or whatever their business matters may be that they would have to take care of.
>
> Q. "With your experience as a driver and your knowledge of the scheduling of Virginia Stage Lines, could you devise a schedule that would increase ridership in your opinion?
>
> A. "Yes, sir, I believe I could. (Vol. IV, p. 58)

* * *

On cross-examination Mr. Meadows was asked to be more specific:

> A. "Okay. For instance, the one big complaint that was always heard by the driver was when the bus arrives in Huntington, West Virginia, at 1:10 in the afternoon and comes back leaving Huntington at 3:30 in the afternoon that they don't have enough time to take care of all their business in that span and that was changed about four years ago from 5:30 to 3:30. ..." (Vol. IV, p. 71)

Not so surprisingly, however, Petitioner failed to inform the public of available service by expending even a nominal effort to advertise or market its product in the affected areas. (Vol. I, p. 61, p. 118; Vol. II, p. 55, p. 77, p. 99, p. 122, p. 144). It was not, however, ignorant of the effects of advertising on ridership as evidenced by Trailways' $4.3 million advertising budget in 1982. According to its witness:

> "We have made numerous attempts in the various locations to try to encourage ridership or additional packages." (Vol. III, pp. 126-127).

According to one Logan businessman:

> "I am very much concerned and feel that Trailways should be required to demonstrate more convincingly that it cannot make money here in Logan. I don't think it has tried very hard. In fact, I think it has tried feebly, hoping to have a failure.
>
> "I don't think this is in the spirit of American entrepreneurship, free enterprise or societal responsibility.
>
> "Trailways, I think you could do better. I think you should be required to show that it just cannot work.
>
> "Also,I would like for it to show why a company should or should not advertise when it is apparently losing money. ...
>
> Q. "If you were losing money yourself, would you advertise?"
>
> A. "Sometimes that is when you have to advertise the most."
> (Vol. II, pp. 106-107).

Furthermore, despite Petitioner's reluctance to employ the use of smaller vehicles, most protestants supported this idea. (Vol. I, p. 75, p. 115, p. 122; Vol. II, p. 99, p. 121, p. 127, p. 133, p. 138, p. 143, p. 198; Vol. IV, p. 58). Interestingly, Petitioner's parent corporation has employed the use of smaller vehicles in at least one application. (Vol. IV, p. 59).

V. CONCLUSION

VSL is asking this Commission not only to relieve it from Respondent's decision below, but also to relieve it from the duty to exercise prudent management practices. Respondent submits that the "Bus Act" was not intended for this use, or abuse.

Unfortunately, the regulatory environment of the past supported and welcomed VSL'S empire-building, chasing costs with rates without regard for cost control incentives, such as exploring the application of smaller vehicles. Along the way regulators approved many an application whereby carriers such as VSL took over routes operated by smaller carriers and enjoyed the monopoly status thus created. Meanwhile, many people and communities came to rely on VSL and others as their only source of public transportation.

Now VSL would employ the apparatus of this new federal legislation to divorce itself from the responsibility it earlier promised to fulfill. While this action is undoubtably appropriate in some instances, it should not be employed where VSL has played a key role in creating the very situation from which it seeks relief.

The evidence below is clear that VSL has not designed schedules or advertised to optimize ridership - in fact, the opposite is suggested. It has refused to take reasonable steps to reduce costs - it has had no incentive to do so. And perhaps most importantly, senior citizens, hospitals, merchants and entire communities have come to depend on VSL'S service - to their detriment if this Petition is granted.

Accordingly, Respondent submits that its disposition of VSL'S request below was reasonable and in keeping with not only the letter but also the spirit and intent of the Bus Regulatory Reform Act of 1982. Respondent further submits that Petitioner possesses more than sufficient resources to conduct a successful operation over the routes in question. If, after employment of good faith efforts, Petitioner is unable to stimulate adequate usage of its service - where revenues are greater than costs - Respondent will be more than willing to reassess its position.

Therefore, for all the reasons stated herein Respondent respectfully urges this Commission to affirm its decision.

Respectfully submitted,

THE WEST VIRGINIA PUBLIC
SERVICE COMMISSION

By Counsel

CERTIFICATE OF SERVICE

I, Franklin G. Crabtree, counsel for the West Virginia Public Service Commission, do hereby certify that I have served a true copy of the foregoing Objection to Petition upon George W. Hawthorn, Attorney for Virginia Stage Lines, Inc., 1500 Jackson Street, Dallas, TX, 75201 and on Norman Googel, Esq., Appalachian Research and Defense Fund, Post Office Box 1094, Welch, W.V., 24801, by mailing a copy thereof to them by U.S. Express Mail on this 1st day of July, 1983.

Franklin G. Crabtree

Franklin G. Crabtree

FGC
Attachment 11

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BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

MC-1501 (Sub Nos. 104 and 172)
MC-1515 (Sub Nos. 118, 175)

Greyhound Lines, Inc.
Greyhound Tower-Sta. 1742
Phoenix, AZ 85077

EXIT PETITION: WEST VIRGINIA
Various Routes in West Virginia as Set Forth Herein

OBJECTIONS OF THE WEST VIRGINIA PUBLIC SERVICE COMMISSION TO THE PETITION OF GREYHOUND LINES, INC., FOR PERMISSION TO DISCONTINUE BUS SERVICE IN WEST VIRGINIA

June 15, 1983

Franklin G. Crabtree and
S. Thornton Cooper
Counsel for
West Virginia Public Service
Commission
State Capitol
Charleston, W.V. 25305
(304) 348-2084

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

MC-1501 (Sub Nos. 104 and 172)
MC-1515 (Sub Nos. 118, 175)

OBJECTIONS OF THE WEST VIRGINIA PUBLIC SERVICE COMMISSION TO THE PETITION OF GREYHOUND LINES, INC., FOR PERMISSION TO DISCONTINUE BUS SERVICE IN WEST VIRGINIA

BASIS FOR OBJECTIONS

Comes now the West Virginia Public Service Commission (WVPSC) or Respondent) and states:

1. These objections are being filed pursuant to 49 U.S.C. §10935 and 49 C.F.R. §1169 in opposition to the petition of Greyhound Lines, Inc., (Greyhound or Petitioner) to abandon certain interstate regular-route passenger service in the State of West Virginia;

2. To the best of Respondent's knowledge, the Petitioner does not receive nor has not been offered any relevant operating subsidies nor financial assistance to support the service which it proposes to abandon;

3. Should the Petitioner obtain the relief it seeks, the resulting abandonment of regular route service would

have severe adverse effects on the traveling and shipping public located along the subject routes since many of these persons have no feasible alternative means of public transportation (as more fully set forth below);

4. As more fully set forth below, although Petitioner's revenues from providing the service in question may not meet its related variable costs, Petitioner has not made reasonable efforts or employed reasonable management practices designed to increase said revenues or reduce said costs.

IN CONSIDERATION WHEREOF, your Respondent urges this Honorable Commission to consider these pleadings and arguments attached hereto, and to deny Petitioner's request for permission to abandon certain interstate and intrastate regular-route bus service in West Virginia for the reasons set forth herein.

VERIFICATION

"I, Franklin G. Crabtree, verify under penalty of perjury under the laws of the United States of America, that the information in this statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. " (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

Franklin G. Crabtree 6-14-83
Signature Date

State of: ________________

County of: ________________

Taken, sworn to, and subscribed before me this the 14

day of [illegible], 19[illegible]

Notary Public

My Commission expires [illegible], 19__

NOTES AND ERRATA

For purposes of transcript citation, WVPSC will follow the designations in the Hearing Examiner's Decision of March 22, 1983, omitting transcripts from hearings held on routes where abandonment was permitted, to-wit:

Vol. II - Grafton - "Routes 14 and 15"
Vol. III - Spencer - "Route 17"
Vol. IV - Harrisville - "Route 16"
Vol. V - Glenville - "Route 17"
Vol. VII - Ripley - "Route 13"
Vol. VIII* - Whitesville - "Route 6"
Vol. IX** - Charleston - "Routes 1, 9 and 10"
Vol. X - Grafton - "Routes 14 and 15"

* Please note that in his decision of March 22, 1983, the Hearing Examiner mistakenly cites Volume VII of the transcript, instead of Volume VIII, when discussing evidence adduced at the hearing in Whitesville on January 26, 1983 (Attachment 2, pp. 18-19).

** Although the WVPSC permitted abandonment of these routes, Volume IX contains testimony from both Petitioner and Staff concerning the financial impact of all abandonments considered in this proceeding.

Finally, on Page 5, the Hearing Examiner's Decision of March 22, 1983, incorrectly uses the heading, "Route (1)" which should have read "Route (21)."

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V. Conclusion 37

Attachments

1. - - Letter from Chairman Howard dated January 21, 1983.

2. - - Hearing Examiner's Decision of March 22, 1982, in M.C. Case No. 21673.

3. - - WVPSC Order of March 28, 1983, in M.C. Case No. 21673.

4. - - Hearing Examiner's Decision - Final as of March 29, 1983 - in M.C. Case No. 21677.

5. - - Congressional Report (exerpt) - House, November 19, 1981.

Transcripts

Vol. II	-	Grafton	-	"Routes 14 and 15"
Vol. III	-	Spencer	-	"Route 17"
Vol. IV	-	Harrisville	-	"Route 16"
Vol. V	-	Glenville	-	"Route 17"
Vol. VII	-	Ripley	-	"Route 13"
Vol. VIII	-	Whitesville	-	"Route 6"
Vol. IX	-	Charleston	-	"Routes 1, 9 and 10"
Vol. X	-	Grafton	-	"Routes 14 and 15"

I. STATEMENT OF THE CASE

On November 29, 1982, Greyhound Lines, Inc., a corporation, Phoenix, Arizona, the Petitioner herein, filed a petition with the WVPSC to discontinue motor bus transportation in the State of West Virginia, under P.S.C. M.C. Certificate No. 5184, as follows:

Route (1) That portion-Beginning at Hurricane over Old U.S. Route 60 to Charleston; subject to the condition that no passenger shall be transported whose entire ride lies betweeen Charleston and St. Albans, Kanawha County, or intermediate points. Also, from the junction of Old and New U.S. Route 60 east of Malden, over Old U.S. Route 60 via Belle to its junction with New U.S. Route 60 at Witcher, all within Kanawha County.

Route (6) Beginning at Charleston, Kanawha County; thence in a southerly direction over U.S. Route 119 to its intersection with State Route 3; thence in a southeasterly direction over State Route 3 to its intersection with U.S. Route 21 at Beckley, Raleigh County, returning to the place of beginning over the same route by a reverse order of description; subject to the condition that no passenger shall be transported whose entire ride lies between Charleston, Kanawha County and Racine, Boone County, or intermediate points and between Beckley and Eccles, Raleigh County, or intermediate points.

Route (9) Beginning at Charleston, Kanawha County; thence in a northwesterly direction over U.S. Route 35 to its intersection with State Route 25; thence in a northwesterly direction over State Route 25 to its intersection with U.S. Route 35; thence in a northwesterly direction over U.S. Route 35 to the West Virginia-Ohio State line at Point Pleasant, Mason County, returning to the place of beginning over the same route by a reverse order of description; subject to the condition that no passenger shall be transported whose entire ride lies between Charleston and Dunbar, Kanawha County, or intermediate points. NOTE: U.S. Route 35 is now designated State Route 62.

Route (10) That portion-Beginning at the intersection of U.S. Route 60 with State Route 17, approximately two miles west of St. Albans, Kanawha County, thence over State Route 17 to its intersection with IH 64; also beginning at Henderson with IH 64; also beginning at Henderson, Mason County, over State Route 2, a distance of less than one mile, to Point Pleasant, Mason County; subject to the condition that no passenger shall be transported whose entire ride lies between Henderson and Pt. Pleasant, Mason County, or intermediate points. NOTE: State Route 17 is now designated U.S. Route 35.

Route (13) Beginning at the intersection of State Route 56 with U.S. Route 21; thence over State Route 56 to its intersection with State Route 2 at Ravenswood, Jackson County; thence over State Route 2 to Parkersburg, Wood County, returning to the place of beginning over the same route by a reverse order of description. NOTE: State Route 2 is now designated as State Route 68.

Route (14) That portion-Beginning at Clarksburg, thence over U.S. Route 50 to the West Virginia - Maryland State Line, approximately four miles east of Aurora, Preston County; subject to the condition that no passenger shall be transported whose entire ride lies between Clarksburg and Bridgeport, Harrison County, or intermediate points.

Route (15) Beginning at the West Virginia-Maryland State Line at Gormania, Grant County; thence over U.S. Route 50 to the West Virginia-Virginia State Line, approximately three miles east of

Capon Bridge, Hampshire County, returning to the place of beginning over the same route by a reverse order of description.

and also under P.S.C. M.C. Case No. 17184, July 10, 1968,

amending P.S.C. M.C. Certificate No. 5184, as follows:

From the junction of U.S.Route 50 and West Virginia Route 7 over West Virginia Route 7 to its junction with U.S., Route 220, thence over U.S. Route 220 to Keyser, West Virginia, thence from Keyser, West Virginia, returning over U.S. Route 220 to the junction of U.S. Route 220 and U.S. Route 50 just south of New Creek, West Virginia.

Route (16) Beginning at Ellenboro, Ritchie County; thence over State Route 16 to Harrisville, Ritchie County; thence over State Route 31 to Nutters Farm, Ritchie County, returning to the place of beginning over the same route by a reverse order of description.

Route (17) Beginning at Charleston, Kanawha County; thence in a northeasterly direction over U.S. Route 119 through Spencer, Roane County, to its intersection with U.S. Route 19 at Weston, Lewis County; thence in a northerly direction over U.S. Route 19 to its intersection with U.S. Route 50 at Clarksburg, Harrison County, returning to the place of beginning over the same route by a reverse order of description; subject to the condition that no passenger shall be transported whose entire ride lies between Jane Lew, Lewis County, and Clarksburg, Harrison County, or between Jane Lew and Weston, Lewis County, or between Clarksburg, Harrison County, and Weston, Lewis County.

and also under P.S.C. M.C. Case No. 17184, January 19, 1972,

amending P.S.C. M.C. Certificate No. 5184, as follows:

That portion - Between Clarksburg, Jane Lew and Weston, via U.S. Highway 19.

and also under P.S.C. M.C. Case No. 18686, October 31, 1972, amending P.S.C. M.C. Certificate No. 5184, Item No. 17, as follows:

> Between Glenville, Gilmer County, Grantsville and Millstone, Calhoun County, via West Virginia Route Nos. 5 and 16.
>
> Route (18) Beginning at Clendenin, Kanawha County; thence over State Route 4 to Sutton, Braxton County; thence over U.S. Route 19 to Weston, Lewis County, returning to the place of beginning over the same route by a reverse order of description.
>
> Route (21) Beginning at Morgantown, Monongalia County; thence in a southerly direction over State Route 73 to Fairmont, Marion County, returning to the place of beginning over the same route by a reverse order of description subject to to the condition that no passenger shall be transported whose entire ride lies between Little Creek and Fairmont or whose entire ride lies within the corporate limits of Morgantown.

and also under P.S.C. M.C. Case No. 18659, April 5, 1982, amending P.S.C. M.C. Certificate No. 5184, as follows:

> That portion - Beginning at Morgantown, thence in a westerly direction over State Route 7 to its intersection with U.S. Route 19, thence in a southerly direction over U.S. Route 19 through Rivesville, Marion County, to Fairmont, Marion County; subject to the condition that passengers whose entire ride lies between Rivesville and Fairmont, or intermediate points will be transported on through buses operating between Pittsburgh, PA and Clarksburg, WV only.

By PSCWV order entered on December 9, 1982, the Petitioner was required to give notice of said application and of the time and place of the hearings thereon by publishing a copy of this order at least twice in a newspaper published in each of the Counties of Kanawha, Raleigh, Boone, Mason, Jackson, Harrison, Preston, Grant, Hampshire, Mineral, Ritchie, Lewis, Gilmer, Calhoun, Monongalia, Marion, Roane, Wood and Taylor. By another PSCWV order, entered on December 9, 1982, this matter was set for hearings to be held in Morgantown, Grafton, Spencer, Harrisville, Glenville, Sutton, Ripley, Whitesville, and Charleston.

The hearings were held as scheduled during the month of January, 1983. The Respondent appeared in person by its Counsel, Mr. Anthony P. Carr, at all but one of the hearings. At that hearing the Petitioner was represented by Mr. E. Muncy, District Manager, and by Mr. Robert L. Little, Assistant District Manager and Terminal Manager. The Commission's Staff was represented variously at all hearings by its Counsel: Mr. Franklin G. Crabtree and Mr. S. Thornton Cooper. Some seventy-four individuals appeared at the various hearings to offer testimony in protest to the Petitioner's application.

On March 22, 1983, Robert W. Glass, the PSCWV Hearing Examiner assigned to the case, issued a Hearing Examiner's Recommended Decision which would permit the Petitioner to discontinue Routes 1, 9, 19, 18, and 21. Because of substantial evidence favoring retention of the remaining routes other than Routes 13, 16, and 17, the Hearing Examiner denied the Petitioner's request to abandon any of the other routes listed above.

However, in the case of Routes 13 and 17, the Hearing Examiner stated that while some service (perhaps 2-3 times per week) should be retained thereon, the Petitioner should refile for a service reduction on those two routes.

With respect to Route 16, which provides service to Harrisville, Ritchie County, the Hearing Examiner pointed out that the Petitioner had failed to comply with the WVPSC's December 9, 1982, order to publish legal advertisements pertaining to the proposed abandonment in newspapers published in 19 different counties, including Ritchie County. Actually, publication was made in newspapers published in only 8 of those counties. Ritchie County, wherein Harrisville and Route 16 are located, is one of the 11 counties in which the Petitioner failed to publish.

As a likely result of this failure to publish, no protestants attended the public hearing held in Harrisville on January 17, 1983, relating to the proposed abandonment of Route 16.

The Petitioner's position (see pp. 9-10 of the Petition) is that, because legal advertisements were published in the Parkersburg Sentinel, a Parkersburg newspaper, and the Charleston Gazette, a Charleston newspaper which purports to be a state newspaper, the Petitioner complied with the December 9, 1982, order. However, as the Hearing Examiner set forth in his decision, the Petitioner's actions did not comply with §59-3-1(c) of the _West Virginia Code_.

That provision reads: "Notwithstanding any other provision of this Code or law to the contrary, a qualified newspaper shall for all purposes be considered to be published _where it is first placed in circulation_." (emphasis added).

Hence under West Virginia law, the _Sentinel_ and the _Gazette_ are published in Parkersburg, Wood County, and in Charleston, Kanawha County, respectively, not Harrisville, Ritchie County. (By automobile, Harrisville is 41 miles from Parkersburg and 106 miles from Charleston). It is clear, then, that the Petitioner failed to comply with applicable West Virginia law in respect to legal notice.

The Hearing Examiner stated that if the Petitioner refiled for permission to abandon Route 16, and properly notified the residents of Ritchie County, the Commission should reconsider its decision not to approve the abandonment of Route 16.

On March 28, 1983, the WVPSC affirmed the Hearing Examiner's Recommended Decision in its entirety.

On May 26, 1983, the Petitioner served the WVPSC with copies of the abandonment petition to the Interstate Commerce Commission.

II. APPLICABLE LAW

Since the routes in question were instituted prior to August 1, 1982, this Commission must grant Petitioner's request for relief from WVPSC's decision unless it finds:

> 1. That such discontinuation or reduction is not consistent with the public interest; or
>
> 2. That continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce. 49 USC §10935(e)(1)(A)(emphasis added).

In so doing "the Commission shall accord great weight to the extent to which interstate and intrastate revenues received for providing the transportation proposed to be discontinued or reduced are less than the variable costs of providing such transportation, including depreciation for revenue equipment. For purposes of the preceeding sentence, the carrier filing a petition for permission to discontinue or reduce service shall have the burden of proving the amount of interstate and intrastate revenues received for providing the transportation." 49 USC §10935(g)(1).

The act further provides that this Commission shall determine and give appropriate weight to the following considerations:

A. The National Transportation Policy of

§10101 of this Title;

B. Whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or reduced from a financially responsible person (including a governmental authority); and

C. In the case of a petition to discontinue transportation to any point, whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available. 49 USC §10935(g)(2).

In pertinent part the National Transportation Policy requires the ICC, in regulating transportation by motor carriers by bus, to promote competitive and efficient transportation services in order to:

1. Meet the need of shippers, passengers and consumers;

2. Allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

3. Allow the most productive use of equipment and energy resources;

4. Enable efficient well managed carriers to earn adequate profit, attract capital, and maintain fair wages and working conditions;

5. Provide and maintain service to small communities and small shippers and intrastate bus companies;

6. Provide and maintain commuter bus operations;

7. Improve and maintain a sound, safe, and competitive privately owned motor carrier system;

> 8. Promote greater participation by minorities in in the motor carrier system; and
>
> 9. Promote intermodal transportation; ... . (49 USC §10101(2).

Accordingly, Respondent submits that its objection could be sufficient cause to deny this Petition if it demonstrates to this Commission either that the proposed abandonments are inconsistent with the public interest, or that continuance of the subject routes will not constitute an unreasonable burden on the interstate commerce. Respondent's interpretation of the disjunctive nature of this "dual exit standard" in 49 USC §10935(e)(1)(A) is consistent with the interpretation given this section by James J. Howard, Chairman of the Committee on Public Works and Transportation. Chairman Howard's interpretation appears in a letter dated January 25, 1983, to Congressman Nick J. Rahall, II, in response to an earlier inquiry by Congressman Rahall concerning another "Bus Act" case then pending before the WVPSC - to-wit:

> "Note, this test is stated in the disjunctive, therefore, persons opposing this discontinuance can prove either point and succeed in their objection. This point was strongly recommended by you and others who were cautious in their approach to the legislation in order to assure service to small communities. By adopting this dual exit standard for service commenced before or after (sic) August 1, 1982, the Act provides more

> protection to existing service than to new service, the reason being that it was a desirable approach to encourage new service by carriers." (Attachment 1, p. 1) (emphasis added).

Concerning the weight the public interest test has in respect to its economic counterpart in the dual exit standard:

> "... the intent of this Bill is to insure that the public interest test has an equal emphasis with economic considerations and the ICC interpreting otherwise would be a regulatory charade. The Act does not create, and the Public Works and Transportation Committee would not condone such a charade. I am certain that will be one of the areas where we will be monitoring closely in oversight hearings." (Attachment 5, p.2, Congressional Record-House, Nov. 19, 1981).

The colloquy between congressmen, as presented on the Congressional Record in Attachment 5, further evidences legislative intent to "build-in" to the Act special protection for rural and small communities such as those affected by this Petition.

> Congressman Clinger:
>
> > "In this legislation it is my understanding we have safeguards which have been mentioned here and which have been inserted directly into the statute to address this concern...."
>
> Congressman Shuster:
>
> > "In the national transportation

> policy it is explicitly - not implicitly, but explicitly - stated that the ICC have as a goal providing and maintaining service to small communities; ...
>
> "In regard to exit, the bill specifically requires that the ICC shall consider whether a community is losing its last bus service to that particular area." (Attachment 5, p. 3).

With the proper scope of review in mind, we now turn to the bases for Respondent's objections to this Petition and Respondent's arguments thereon.

III. PUBLIC IMPACT

THIS COMMISSION SHOULD DENY GREYHOUND'S PETITION SINCE THE PROPOSED ABANDONMENTS WOULD SIGNIFICANTLY HARM THE INTERESTS OF THE TRAVELING AND SHIPPING PUBLIC WHO LIVE AND WORK IN THE AFFECTED COMMUNITIES.

Numerous public witnesses appeared at the hearings below in opposition to Petitioner's abandonment of service in their respective communities. Most of these persons acknowledged Greyhound's need to maintain a financially viable operation. However, many of these persons were not convinced that Greyhound had made a good faith effort to employ management practices designed to promote service.

People from each subject area expressed concern with Greyhound's withdrawal of their only feasible means of public transportation. In many cases they predicted harmful personal and economic consequences if Greyhound's proposals were successful. Almost without exception protestants indicated they had no objections to further rate increases or the use of smaller vehicles.

Accordingly, Respondent offers the following discussion of the record produced below to illustrate the potentially devastating public impact of Petitioner's proposals:

Grafton - Routes 14 and 15

If Petitioner's request to abandon service on "Routes 14 and 15" is granted, the communities of Romney, Burlington, Keyser, Mount Storm, Gormania, Aurora, Fellowsville, Grafton and Bridgeport would lose their last means of regular-route intercity public transportation.

Among the twenty witnesses appearing in opposition to this request was Steve Goff, Taylor County Economic Development Administrator, who testified that abandonment of this service would exacerbate the already distressed condition of the county's economy. (Vol. II, pp. 25-30)

Area businessmen expressed concern with the loss of package express service since employment of alternative shipping means would, in many cases, result in, e.g., more down-time for mining machinery and, thus, lost production time, in addition to loss of sales of machinery and parts. (Vol. X. pp. 23-28; Vol. II, pp. 31-40; Vol. X, pp. 65-67; Vol. X, pp. 68-70; Vol. X, pp. 78-81)

Jim Bucklew, purchasing agent for Allegheny Mining Corporation, Mount Storm, indicated his firm may be forced to purchase parts from out-of-state sources if abandonment is permitted. (Vol. II, pp. 59-61).

According to Greyhound's ticket agent in Grafton, Richard D. Myers, one local hospital which receives blood from Huntington on a same-day basis depends on the continuation of Petitioner's service (Vol. X, p. 42). Mr. Myers also predicted a transportation dilemma for elderly and handicapped persons in the area. (Vol. X, p. 43).

Dick Copeland, Taylor County Commission, expressed appreciation for past service rendered by Petitioner, but disenchantment with Greyhound's attempt to abandon service to the area without consulting knowledgable people in the community in an effort to enhance usage. (Vol. X, pp. 53-55).

Interestingly, one witness pointed out that cab service to Bridgeport (Clarksburg) - the closest point from Grafton to Greyhound service - is cost-prohibitive for most people ($30-$35). Virginia Dodd, Grafton area resident, further stated that Petitioner's ridership problems are partially caused by inconvenient scheduling. (Vol. II, pp. 9-19).

Moreover, if abandonment is permitted on "Routes 14 and 15", according to Ticket Agent Myers:

> "... there goes our public transportation. We don't have anything. So when a prospective industry comes into Grafton, West Virginia, and

> says, "I'm thinking about locating here. What kind of public transportation do you have?" We are going to tell them none." (Vol. X, p. 44).

Spencer and Glenville - Route 17

This proposed victim of Greyhound's Petition pursuant to the Bus Act, "Route 17", provides the only regular-route intercity public transportation between the towns and communities of Clendenin, Walton, Spencer, Grantsville, Glenville, Weston and Clarksburg.

Although each of the twelve protestants appearing at the Spencer hearing were only occasional users of Petitioner's passenger service, each had no feasible transportation alternative. (Vol. III, pp. 23-30; 30-36; 36-41; 41-46; 48-51; 67-73; 76-81).

Perhaps more importantly, David Graham, Administrator of Roane General Hospital, testified to his daily use of package express service for same-day laboratory test results from Fairmont. According to Mr. Graham, a delay in obtaining these results could extend patient stays at Roane General. (Vol. III, pp. 52-63)

Spencer City Councilman Rex Starcher expressed concern for the transportation needs of the relatively high percentage

(43%) of county residents who are senior citizens. He further testified the proposed abandonment would have a negative impact on the already depressed economy of Roane County (23% unemployment). (Vol. III, pp. 8-23).

This concern for senior citizens was echoed by County Sheriff R. L. McCulty:

> "They could not afford an automobile or they are too old to drive one. In West Virginia we take the position that the older you are the higher risk you are. They would rather ride public transportation than ride their own car." (Vol. III, p. 90).

Similar concerns were expressed on behalf of Gilmer County residents at the hearing in Glenville. According to Garnett Taylor, senior citizen and employee of Glenville State College, discontinuance of the area's only intercity public transportation would isolate Glenville, the county seat. (Vol. V, p. 45).

Protest was lodged on behalf of the Glenville State College community by Annetta Haddox, member of the Student Congress, as well as by Nasia Butcher, public relations director. It appears that the subject service is important for purposes of attracting students and faculty to the college's somewhat remote geographic location. Testimony further indicated that 10% of the college community (approximately 2000 students plus faculty and support staff) rely on

Petitioner's service. Accordingly, Ms. Butcher proposed two alternatives to total abandonment of this route. (See Vol. V, pp. 18-25).

Ms. Butcher's proposal was endorsed by Eva Stout who appeared on behalf of the Gilmer County Business Association, whose members rely on Petitioner's package express service. (Vol. V, pp. 25-32).

Furthermore, several witnesses testified to what they perceived as Petitioner's failure to provide scheduling information to the public. (Vol. V, pp. 32-36; pp. 36-42; pp. 47-55).

In the words of Ms. Butcher:

> "As our society has become more mobile and the use of air transportation has tremendously increased, it is our contention that the Greyhound Company has not used the proper foresight in future planning. We believe that as the population has patronized the air industry, Greyhound should have reduced the size of its buses for a more fuel-efficient, cost-efficient service. The day of the 42-passenger bus has long since passed.
>
> "We believe that we are entitled to service from the Greyhound Company and have come here today to express our opposition to discontinuance of the service. We want to keep what little we have left. Do not deny us the privilege of public transportation and do not penalize us for the geographical location of our community.
>
> * * *
>
> "If you lived in this community, you would depend on it too." (Vol. V, pp. 20-21).

Ripley - Route 13

Most of the evidence adduced at this hearing addressed the "tremendous need" for Petitioner's package express service in the Ravenswood area. Ravenswood Mayor Bob Ditmar expressed his belief that Petitioner's recent abandonment of a ticket agency in Ravenswood has raised doubts in the minds of residents as to the realibility of service. According to Mayor Ditmar, the proposed abandonment would leave no public transportation between Ravenswood, Jackson County's largest municipality, and Ripley, the County seat. (Vol. VII, pp. 20-27).

Mayor Ditmar's concern with the public's perception of Petitioner's realibility was shared by others. George Weikert, a Ravenswood minister, characterized Petitioner's service as "an operation meant to fail." (Vol. VII, pp. 40). Rev. Weikert explained that potential passengers in Ravenswood had no scheduling information available to them, nor any shelter while waiting on the bus. (Vol. VII, pp. 36-43).

Appearing on behalf of the 42-member Ravenswood Chamber of Commerce, President Lawrence W. Hancock also expressed a need on the part of the business community for more scheduling information. He said total abandonment would work an additional hardship on Ravenswood businesses. (Vol. VII, pp. 27-36).

Significantly, Petitioner never addressed or attempted to rebut any evidence received - at Ripley and elsewhere - concerning its failure to provide scheduling information.

According to Wilma Brown of Starr Printing and Publishing Company, since the closing of Greyhound's agency in Ravenswood her company has lost annual revenues of approximately $40,000. Starr used Petitioner's package express for shipments to printing customers and to receive parts for presses and equipment. It appears no alternative service is available whereby Starr can serve its customers on the timely basis required. (Vol. VII, pp. 43-55).

As to her frequency of reliance on Greyhound's service, Ms. Brown testified:

> "... I know there were approximately 10 packages a week, ever (sic) Monday, as regular as clockwork, that went from our office, in addition to others. We have customers all over the State. We ship and receive all the time, and relied a lot on Greyhound." (Vol. VII, p. 50).

Whitesville - Route 6

Petitioner's "Route 6" provides passenger and package express service between Charleston and Whitesville, Boone County. This is the only public transportation available beteen these points.

Considerable testimony was received in Whitesville from senior citizens who rely on Petitioner's service for transportation to Charleston - their community of interest - for medical attention, shopping and banking. (Vol. VIII, pp. 60-64; pp. 64-68; pp. 68-72; pp. 72-76; pp. 76-78; pp. 79-82).

Again, no one objected to an increase in fares as an alternative to abandonment, and no witness objected to Greyhound's use of smaller vehicles. The Petitioner's failure to properly inform the public of its service was once more raised by protestants. According to Nick Arvon, Whitesville businesssman, approximately 20,000 potential users of Petitioner's service reside along this 40-mile route. Mr. Arvon further testified that other area businesses rely on Petitioner's package express service. (Vol. VIII, pp. 15-27).

Furthermore, three protestants testified to their daily use of Petitioner's passenger service for transportation to and from, or to or from, work. One of these persons, Edith Jones, said she would be forced to either quit work in Charleston or relocate if this route is abandoned. None of these witnesses objected to a fare increase or the use of smaller vehicles. (Vol. VIII, pp. 41-47; pp. 52-56; pp. 57-59). At the Charleston hearing on January 28, 1983, these protestants were supported by the testimony of Mildred Kinder who is a weekend commuter on "Route 6 . (Vol. IX, pp. 21-27)

IV. FINANCIAL IMPACT

A. ASSUMING ARGUENDO PETITIONER'S OWN CALCULATIONS OF REVENUES AND VARIABLE COSTS, IT HAS SIGNIFICANTLY OVERSTATED THE FINANCIAL IMPACT OF CONTINUING SERVICE OVER THE SUBJECT ROUTES.

-Revenue-

On Page 18 of Greyhound's Petition it asserts as grounds for relief that during the period 1975-1983 the WVPSC granted it cumulative intrastate rate increases of 90% while its interstate rates were increased 98.65%. These respective increases are set forth in detail on Page 2 of Petitioner's Appendix A-10.

Interestingly, during this period the Respondent granted substantially all increases proposed by the Petitioner in each case. Thus Greyhound's implication that the WVPSC has been insensitive to its needs for rate relief is misleading and totally without merit. Moreover, the most likely implication to be drawn from this history of Greyhound's rate increases in West Virginia is that the WVPSC was and is more than willing to respond to Petitioner's reasonable requests for reasonable rate relief.

More importantly, however, Greyhound fails to point out that on March 29, 1983, the Respondent granted it increased rates for intrastate passenger and package express service of 25.79%, generating additional annual operating revenues of $299,444. Greyhound fails to take the resulting revenues into account in computing the shortfall of revenues as compared to variable costs. (Attachment 4 - order of March, 29, 1983, M.C. Case No. 21677). In that case Petitioner's witness testified that Greyhound might seek intrastate/interstate rate parity by a series of rate increases. (Attachment 4, p. 3).

Significantly, on Page 4 of its Petition, Greyhound lists its version of variable costs and revenues for the affected service. According to its numbers, for all routes which it proposes to discontinue variable costs exceed revenues by $284,119 (total of Column 4). Petitioner's most recent rate increase more than makes up for this disparity ($299,444 - $284,119 = $15,325); and this result becomes even more significant when costs are appropriately adjusted as discussed below.

Furthermore, the record below discloses that, almost without exception, members of the public opposed to Greyhound's Petition to abandon service are quite willing to pay increased rates for passenger and package express transportation. (e.g., Vol. II, p. 34; Vol III, p. 34; Vol. V, pp. 14-15; Vol. VII, p. 24; Vol. VIII, pp. 57-59; Vol. X, p. 48).

In calculating revenue generated by the routes in question, Petitioner also failed to take into account a portion of those passenger revenues produced by passengers whose trips, interstate or intrastate, either began or ended on the routes in question. This treatment differs from that used in respect to package express since Petitioner considered all traffic handled on the route in question for purposes of calculating revenue. (Vol. IX, pp. 52-54; Petitioner's Appendix A-13, p. 1). Respondent asserts that passenger revenues be given the same treatment for purposes of Bus Act analysis. Obviously passenger traffic both to and from points on the subject routes will be affected if this Petition is granted. Thus all passenger revenue generated by trips to and from the affected areas is revelant.

This revenue calculation is further colored by Petitioner's use of a one-week traffic study which assumes that a sample of drivers' reports for the first week of November, 1982, is statistically precise for determining revenue attributable to the routes in question. From the record below, however, it is unclear why the sample was taken in November since Petitioner's witness testified:

> "Well, my experience in the bus industry, (sic) May and October are very typical months." (Vol. IX, p. 73).

Respondent submits that by the Petitioner's own admission the traffic study sample was not taken during the most typical months of ridership and package express shipments. Since the results of this one-week sample were annualized for purposes of all of Petitioner's assumptions and calculations in this case, Respondent challenges the precision of Petitioner's sampling method as well as the reliability of its conclusions.

-Costs-

As indicated in its filing herein, Petitioner calculated variable costs "based on the per bus mile cost historically incurred ... in the eastern half of the United States during the twelve months ending November 30, 1982." It further states:

> "It is assumed these costs per bus mile apply to the discontinued service since the costs per mile do not materially vary from one geographic area to another." (Appendix A-13, p. 2).

Respondent submits these average costs are likely inappropriate in respect to, for example, station and agent costs on marginal routes, such as the routes in question. In fact, the actual costs should be easily obtainable since they are likely kept at individual stations in the normal course of business.

Furthermore, a portion of traffic costs should have been excluded from Petitioner's calculation since the expense of preparing tariffs and schedules at Petitioner's general offices would not vary with either the level of service or the volume of traffic.

Advertising expense should have been adjusted to actual expense incurred in the affected areas (which is practically non-existent) plus the percentage of national advertising cost which the revenue passenger miles in question bear to the Petitioner's system revenue passenger miles.

Insurance and safety costs have little relationship to volume of traffic or service. Thus, items grouped under this cost category, which are purchased on a systemwide basis, should be excluded in the variable cost computation. Petitioner apparently failed to adjust its costs accordingly.

Also, Petitioner's filing fails to demonstrate that its administrative and general expenses are directly related to transportation over the affected routes. Accounts under this heading represent the organizational cost of doing business. WVPSC does not believe these costs would vary despite service reductions to the points in question. Thus, these costs should not be included in determining variable costs for purposes of the Commission's consideration.

Finally, Petitioner's depreciation expense appears to be unadjusted by removing depreciation costs for all assets except revenue equipment. Depreciation of revenue equipment would not normally be considered a variable cost, but for specific reference in the Bus Act. Since the Act specifies only depreciation of revenue equipment, depreciation costs of all other assets should be eliminated.

B. THE PETITIONER SHOULD NOT BE PERMITTED TO ABUSE THE BUS ACT BY EMPLOYING THE RELAXED EXIT STANDARDS TO EXTRICATE ITSELF FROM SITUATIONS CREATED BY ITS FAILURE TO EMPLOY REASONABLE MANAGEMENT PRACTICES.

In the decision rendered below the Hearing Examiner concluded that the Petitioner has made "little effort if any" to mitigate the loss position presented to support its proposed abandonment:

> "The record is replete with testimony indicating that the Petitioner has failed to sufficiently inform passengers and potential passengers, as well as shippers and potential shippers, of services available to them. Indeed, in the words of one protestant, in some areas it appears that the Petitioner has conducted "an operation meant to fail."" (Attachment 2, p.26).

In its Petition, however, Greyhound asks this Commission to believe the Examiner's conclusion is totally unsubstantiated by the evidence. (Petition, p. 9). This assertion ignores uncontested testimony to the contrary, to-wit:

> "Q. Have you ever seen an advertisement of bus service to increase ridership here?
>
> A. No, and in fact, it is sometimes difficult to locate information about schedules and so forth. I have, on occasion, attempted to call and found something of a challenge to discover the phone number to obtain that information locally." (Vol. V, p. 39).

* * *

"I used to be Mayor of this town.... If you'll look in your directory, there's no Greyhound bus listing and I'll bet if you took a survey in Gilmer County, one per cent can tell you where the Greyhound bus is located, what the phone number is, or anything about them, because we get calls everyday at City Hall, "What's the bus schedule?", "Where's the bus located?" It's not known. I don't figure there's ever been an advertisement in the local paper, so naturally ridership is going down." (Vol. V, p.49).

* * *

"... I do not remember being overwhelmed with any advertisements in regard to the kinds of service, or exactly any kind of timetables and information in regard to the service, as to when the buses might be expected to arrive, leave and that type of thing....

"If we were allowed to have a timetable, it certainly would have benefitted the utilization of the service by the citizens of Jackson County....

"We feel if the service remains in Ravenswood, it will be utilized, and if there is a little more information disseminated about the time schedules, it will be more highly utilized...." (Vol. VII, pp. 29-31).

* * *

"My reason for being here, my church is located across the street from the former bus station. It now has a sign, the usual Greyhound sign. The door is locked. There is no schedule there. There is no shelter. People come there and stand in rain, snow, and in the summer, hot weather, waiting on a bus....

"There are no hours listed anywhere. There is not even a little shelter to stand under. You have to stand out in the weather and just wait. Then sometimes the bus doesn's come....

"I think if Greyhound wants to do business there, its going to have to let the people know when the buses run. At least, get them a shelter over their heads, and let them know someone to call....

"I don't doubt that they're not making any money. How could they? Who knows when the bus is going to run. There's nobody to contact. There's no time. The whole thing, to me, is an operation meant to fail." (Vol. VII, pp. 38-40).

* * *

"Q. Just one, Mr. Arvon. If you were in business, how would you pay for this service if you're not getting sufficient revenue?

A. Try to promote more usage of the service. I don't think Greyhound is trying to encourage people to use it.

Q. Well, there's one round trip shedule.

A. How many people know that schedule? I don't see any signs. I've been here, but there's a lot of other senior citizens that have not. Maybe you should publicize that this service is available at certain times." (Vol. VIII, p. 25).

* * *

"Q. Are you familiar with the advertising that is done in your newspaper?

A. Well, I've been here for going on my fifth year, and they've never even published a schedule in the five years I've been here.

"Q. So to the best of your knowledge, Greyhound has not made any effort to advertise, or to notify the public of their schedules?

A. They never have. The only public notice that's ever been put out is the Public Service Commission on the hearing. But

> Greyhound has never done anything in the time that I've had the newspaper, to do anything to increase, or the (sic) help the riders in this area....
>
> "What's the rate from Whitesville to Charleston and when does it run? Nobody knows. I know it goes down in the morning and comes back in the evening. I don't even know what time it runs, and probably none of the rest of the people." (Vol. VIII, pp. 29-32).

Moreover, Respondent has adopted and it fully agrees with the Hearing Examiner's interpretation of the Bus Act in this regard:

> "... the Petitioner has an obligation to make a reasonable effort in good faith, to promote available service to potential passengers and shippers in the area it serves and to employ reasonable management practices in attempting to reduce costs. One would be naive to think that the Act exempts such carriers from the employment of reasonable management practices and efforts designed to promote ridership and reduce costs." (Attachment 2, p. 27).

Thus, Respondent is puzzled by Petitioner's unsupported statement that "...this record is clear that a smaller size vehicle will not in any way offset the losses that your Petitioner is sustaining over the routes herein sought to be discontinued." (Petition, p. 9).

One fact is clear from the record in regard to Greyhound's use of smaller vehicles --- it would thereby reduce its orders of 43-passenger Ameri-cruisers from Motor Coach Industries (MCI), a wholly-owned subsidiary. In fact, Petitioner's witness below was unclear and evasive when questioned on Respondent's evaluation of smaller vehicle application. Furthermore, Petitioner did not produce one shred of substantial evidence to support its conclusion that it would realize no cost savings from the strategic application of smaller vehicles. (Vol. 9, pp.61-66).

Neither was the Examiner impressed by Petitioner's efforts to reduce its costs "by exploring the application of small vehicles to provide regular-route service in historically low ridership areas." Indeed, it stretches the imagination to think that Greyhound could not realize cost savings by employing smaller vehicles over many lower-ridership routes in its vast transportation network. It is reasonable to asssume that several categories of variable cost - such as maintenance, transportation, insurance and safety, depreciation and taxes, and licenses - would realize reductions by this application.

Respondent asserts that the regulatory environment which supported Greyhound's empire-building and which granted service monopolies enjoyed by Greyhound over the years has chased costs with rates to the extent that cost control incentives were effectively removed. Greyhound now proposes to benefit from its "bigger is better" philosophy, born of captive markets, to relieve it from the responsibility of reasonable management practies.

Notwithstanding the Respondent's lenient decision below, which recognized and eliminated chronic low-ridership routes whose continuance were no longer reasonable, Greyhound now asks this Commission to interpret the Bus Act as not requiring it to exercise prudent fiscal responsibility.

. In addition to the aforementioned management problem, Respondent feels obligated to point out what appears to be a significant decline in ridership attributable to Petitioner's manipulation of certain schedules. At the hearing below Petitioner's witness acknowledged that scheduling can have a significant effect, either positive or negative, on ridership, and that if Greyhound were so inclined it could reduce ridership along a specific route by merely rescheduling service to specific points. Respondent acknowledges Greyhound is unable to offer service to everyone when it is most desirable, and obviously the integrity of Greyhound's intrastate/interstate transportation network requires that some areas will be served at less than optimal ridership times.

Interestingly, however, Petitioner failed to rebut evidence adduced below indicating its low-ridership problems may have been exacerbated by its own imprudent scheduling decisions. Richard Myers, Greyhound ticket agent in Grafton, Taylor County, testified at length in respect to scheduling-related low-ridership problems on "Route 14 and 15."

According to Mr. Myers, schedule changes both before and after the effective date of the Bus Act have had disastrous affects on his ability to "write" tickets for transportation from Grafton. Mr. Myers testified:

> "... its killed us in this area. The bus driver has got to be the loneliest person in town. He comes through every night and, of course, I go down to meet him when he comes in the evening and he hardly has a single passenger on. It is just something that, you know -- It is just a situation where unless we have a particular person who wants to go to Clarksburg, well, I am not going to put anybody on that bus or if I have a particular person who wants to go to Fellowsville, I can do that, you know, but as far as most of your tickets, I would say 70% of your tickets are going to go westbound because there is more of the country westbound. So I am more affected with that than I am with Washington. Washington I can still write a ticket from Grafton to Washington. They have got a four-and-a-half hour lay over in Winchester, roughly going as well as coming back, but we can still do it, you know. Its not like waiting all night in a bus terminal that is not open like Clarksburg." (Vol. II, pp. 36-37)

Furthermore, despite Petitioner's claim that its abandomment proposal came after consultation with, among others, its "field personnel" (Petition, p. 16), during Mr. Myer's tenure as a ticket agent in Grafton, Greyhound has never sought his opinion as to how scheduling could boost ridership. (Vol. II, p. 41).

Furthermore, Greyhound's scheduling on "Route 14 and 15" affect inbound traffic as well:

> "Like I told you, I send a tremendous amount of people out to Clarksburg and Morgantown to catch buses because I can't make the schedule and as well as we have situations where let's say Jane Doe out in Los Angeles, California, wants to come to Grafton to visit Grandma, that agent out there is going to say, "I can get you as far as Clarksburg", you see, "I can't get you into Grafton because the schdule doesn't -- It not always anyways near what you can have once I get you there" and we have a tremendous problem scheduling people back, you see. So what it involves is a pretty big pain for me because I sit down for two or three hours trying to make a schedule for them to come back home on and see that it works both ways. So whatever business I have on this route can work for others, you know, coming back the same way. So at any rate, I think that if we had an attractive schedule, that would definitely help ridership. ..."

V. CONCLUSION

The Bus Regulatory Reform Act of 1982, pursuant to which this Petition has been filed with the Commission, has certainly lived up to its title - - it has significantly reformed the regulatory treatment given motor common carriers by bus by the various state transportation agencies. The legislative intent of Congress, as discussed herein, is clearly to reduce unnecessary regulatory requirements while maintaining bus service in areas where it is the last viable public transportation alternative.

While Congress has chosen to so assist those carriers whose good faith efforts have produced no appreciable results in simulating service usage, this mandate was never intended to help those unwilling to help themselves. Indeed, it is this issue which is squarely before the Commission - - whether it should extricate Greyhound from relatively unproductive routes where, to borrow the observations of one witness, it has conducted "an operation meant to fail".

The record produced below raises substantial questions concerning the revenues produced by the subject routes. The one week traffic study sample from which Greyhound projects revenues was not reliable. Furthermore, Greyhound failed to include a portion of the revenues derived from fares to or from the affected areas. More importantly, the revenue calculation failed to reflect the recent rate increase of approximately $300,000 granted by the WVPSC. The Act explicitly places the burden of proof on Greyhound in respect to revenues.

The evidence further indicates that Petitioner did not accurately reflect the variable costs associated with rendering the service in question. The provisions of the Act, and the National Transportation Policy, further require special consideration of the transportation needs of the many small communities affected by this proposal. Each proposed abandonment would isolate various small communities and their residents who have no other means of intercity public transportation. As noted in the Congressional Record, maintenance of minimal service to these areas is an explicit goal of the Act.

Finally, the Commission should note that the WVPSC carefully scrutinized Petitioner's requests for abandonment in each area, and granted the majority of these requests. WVPSC has further advised Petitioners of acceptable alternative service plans in several affected areas. Most importantly, WVPSC has exhibited keen sensitivity to Petitioner's requests for rate relief.

Accordingly, Respondent submits that its disposition of Petitioner's abandonment requests has been reasonable and in keeping with not only the letter but the spirit and intent of the Bus Regulatory Reform Act of 1982. Respondent further submits that Petitioner has more than sufficient management potential and resources to conduct an operation meant to succeed on the routes in question. Respondent will continue to be open to Greyhound's needs in respect to route abandonments where good faith efforts to optimize usage are demonstrated.

Therefore, for all the reasons stated herein Respondent respectfully urges this Commission to affirm its decision.

Respectfully submitted,

THE WEST VIRGINIA PUBLIC
SERVICE COMMISSION

By Counsel

CERTIFICATE OF SERVICE

We, Franklin G. Crabtree and S. Thornton Cooper, counsel for the Public Service Commission of West Virginia, do hereby certify that we have served a true copy of the foregoing Objection to Petition upon Anthony P. Carr, General Counsel, Greyhound Lines, Inc., Greyhound Tower, Phoenix, Arizona 85077, by mailing a copy thereof to him by U. S. Express Mail on this 15th day of June, 1983.

Franklin G. Crabtree
Franklin G. Crabtree

S. Thornton Cooper
S. Thornton Cooper

FGC
Attachment 12

1. West Virginia communities losing all regular route intercity bus service since November 11, 1982:

Leon
Buffalo
Dunbar
Ravenswood
Harrisville
Cairo
Glenville
Grantsville
Spencer
Walton
Gassaway
Clay
July
Laurel Point
Arnettsville
Smithtown
Burlington
Mt. Storm
Fellowsville
Bridgeport
Racine
Whitesville
Witcher
Rand
Clendenin
Georgetown
Rivesville
Romney
Keyser
Gormania
Aurora
Grafton
Seth
Dickinson
Belle
Malden

2. Communities where regular route intercity bus service is threatened in cases pending before the ICC

Iaeger
Oceana
Ethel
Jeffrey
Chapmanville
Ranger Junction
Marlowe
Bunker Hill
Gilbert
Man
Blair
Madison
Marmet
West Hamlin
Martinsburg
Ridgeway
Pineville
Logan
Clothier
Danville
Racine
Salt Rock
Darkesville

Mr. SUNIA. Please proceed.

TESTIMONY OF FRANK CRABTREE, DIRECTOR, MOTOR CARRIER DIVISION, WEST VIRGINIA PUBLIC SERVICE COMMISSION; HILDA TAYLOR, CLERK, McDOWELL COUNTY, WELCH, W. VA., AND LOU CAPALDINI, PRESIDENT, AMERICAN NATIONAL BANK OF LOGAN, LOGAN, W. VA.

Mr. CRABTREE. Thank you, Mr. Chairman.

In West Virginia, we were concerned with the provisions of the Bus Act early on, and I must say some of our worst fears were also realized since the passage of it. Within 10 days of the effective date, November 19, both Greyhound and Virginia Stage Lines, an operating subsidiary of Trailways, filed petitions for massive route abandonments in West Virginia. With few exceptions, these abandonments adversely affected people with no other feasible means of intercity transportation.

As you will hear, citizens of these communities relied heavily on these transportation forms to meet an array of needs, including personal, economic, educational, medical and political.

There appears to be no way to undo what has already been done in respect to many of these communities, but the scope of this legislation, in terms of societal impact, is a continuing story. Unless certain measures are taken by this committee and Congress in the near future, the unmet transportation needs in largely rural States as West Virginia will continue to grow.

In contrast, this body will hear and have the opportunity to address concerns of more urban States under section 6 of the act, the relaxed entry standards. These are valid concerns, we believe, but West Virginia's problems go to more basic needs. Most distressing from West Virginia's point of view is the ICC's failure to properly interpret and implement congressional intent in its review of State decisions denying exit petitions. These problems are compounded by ICC rules and decisions which presume shortsightedness on the part of the States and good faith on the part of the bus industry. Neither of these presumptions are necessarily accurate.

Generally, the 20 exit cases filed today suggest a reluctance on the Federal level to acknowledge and apply the exit test consistent with the intent of this committee and Congress. It appears the ICC has given little weight to the "coequal" public interest component of the test—and I use the term "coequal" with some authority since, in floor debate on this bill, several of you and your colleagues expounded on this point. But since the ICC had testified on this bill in favor of automatic exit, siding with industry, concerns were appropriately raised.

Congressman Kazen said that the ICC had already made up its mind, and he said there was a doubt in his mind as to whether the ICC will lean in making their positions known on these decisions and when reviewing State exit decisions. And several Congressmen—several of you—asked for assurances that the public interest was adequately protected.

Chairman Anderson responded to this: "Mr. Chairman, the intent of this bill is to insure that the public interest test has an equal emphasis with economic considerations and the ICC interpreting otherwise would be a regulatory charade." Despite assurances that significant changes were not contemplated by the industry, 1 short year down the road from the effective date, you will find bus service significantly changed in West Virginia.

The exit decisions rendered to date evidence a definite leaning on the part of the ICC toward automatic exit. The ICC is not considering public interest equally with economic considerations as prescribed by Congress. Its exit decisions indicate that a charade is indeed being conducted.

Furthermore, as you know, section 17 prohibits State intervention where a carrier proposes rescheduling of existing passenger service. The bus company can adjust schedules as it likes and in any manner it pleases, subject to only 30 days' notice to the State. It is easy to predict the effect on ridership of multiple adjustments and extreme off-peak scheduling on certain routes. The service loses its value to the community, and many needs go unmet. This section gives the company, gentlemen, the right of de facto abandonment subject to no one's approval.

I would suggest that major companies are engaging in this practice to free up more of their resources to compete in newer and denser markets spawned by entry deregulation. The smaller, usually rural, more marginal intrastate routes are being sacrificed, with ICC blessing, for more lucrative hauls over the Interstate Highway System.

Gentlemen, the needs of the traveling and shipping public in West Virginia, as well as in other rural States, cannot be met by carriers interested only in operating over the paths of least resistance and maximum profit; nor does congressional intent as expressed in the act condone such an interpretation or attitude.

Complete scheduling freedom, unchanged, epitomizes Federal naivete at best, insensitivity at worst, when it comes to public transportation needs in rural America.

Thus, we contend that while Congress has appropriately chosen to assist those carriers, whose good faith efforts have produced no appreciable results in stimulating service usage, section 16 was never intended to help those unwilling to help themselves, and unless the ICC's interpretation of the cost/revenue test expressed in the act is to be deemed a regulatory charade, this body should make its intentions crystal clear that the Bus Act will not be used or abused to extricate the industry from relatively unproductive routes where it has conducted an operation meant to fail.

We concur with the resolutions attached to my testimony from the Southern Legislative Conference and the Southern Governors' Association, recommending amendment of 16 and 17 to more closely guide the ICC and the States in their roles in exit and rate cases. We specifically endorse the prior notice amendment submitted by the Illinois Commerce Commission. The act as we view it should be interpreted consistent with the intent of Congress, as regulatory reform, and not as many of you have termed in this morning, deregulation of the industry. It should be implemented to reduce unnecessary regulatory burdens while preserving a minimum level of service. It should not be abused by carriers who have conducted an operation meant to fail, in an attempt to maximize profit at the expense of those in need of basic public transportation.

For all these reasons, we recommend the appropriate amendment of the act.

Thank you.

Mr. **Sunia**. Thank you, Mr. Crabtree.

Let us now hear from Ms. Taylor, before we carry on with questions.

Mr. **Taylor**. Thank you.

As Congressman Rahall announced, my name is Hilda Taylor. I am the clerk of the county commission of McDowell County, which is located in the southern section of West Virginia.

You can look at me and see that I am a senior citizen, and I depend on Trailways, which is the only public transportation that we have in our section of the State. I traveled to this meeting by Trailways, all the way. Without this bus service, I would not have been here. You can see by that, if it affects me that way, how it affects other senior citizens.

I noticed that the bus, when we were coming up, was full of passengers. I had no way of knowing what was under those seats, the freight, and that kind of thing, but I am sure there must have been a lot of it, because I noticed the porters at the bus station, loading freight on the bus, and they must make a little revenue from that.

We would be paralyzed in our section of southern West Virginia if you allow Trailways to abandon our cities. I beg of you—I plead of you—to please reconsider this bill of bus deregulation.

Not only do the elderly travel the buses and depend upon the buses, but our students who are in college depend upon the buses for travel from the colleges to home. And since this Bus Deregulation Act was passed, they have already abandoned weekend trips from Logan, W. Va., into Huntington. So many of our students go to college in Huntington, W. Va., and need that bus to get home on weekends.

Not only do we need the buses for our students and senior citizens for just travel, for vacations, and that kind of thing, but many of them need to get medicine; they need to go to the hospitals. And they have no other way of going except by bus. Now, many of our citizens are on limited income, and they cannot afford the prices that it would cost to ride a taxi. For instance, from Welch, W. Va., to Logan, I called a local cab stand, and I was told that to go that short distance, taxi fare one way would be $46.75. Now, my ticket all the way to Washington, D.C., was only $97.45. So you can see how that compares.

We have a Braille teacher in our school, and he testified at one of our local hearings on this bus situation, and he said that he would have to leave our part of the State if he lost the bus service. He needs that.

Now, I have a picture and a map of the bus and train schedules posted in my office that shows 201 buses entering and leaving Welch, W. Va., daily. And if they made money then, they should be able to make it now, if they give us a schedule. It is no good to have a schedule that you can get there but you cannot get back. We need both. And we also need the buses on the weekends. A lot of our people are stranded when they come into Welch. They have bought their ticket maybe in Baltimore or Washington or someplace like that, thinking that they could travel over the weekend, but when they get to Welch, they find that those buses now have been abandoned on the weekend, so they cannot get any further than Welch.

The bus stations are closed certain hours. If you would happen to get into a city and have to change buses in the wee hours of the morning—you might be out in the cold or the rain or the sleet—and you take a person such as myself, to be out in the wee hours of the morning in the dark and the cold for 2 or 3 hours, and that would not be so good.

As you know, we have a lot of unemployment in our section of the State. We depend upon the coal mines, and a lot of the miners are idle now. And we will need buses more in the future than we have in the past, because a lot of those people cannot continue to make payments on their cars, and will lose their cars.

I cannot see that the bus companies do any advertising to try to get business. The only advertisement, just about, that I hear is in the winter months, when they will say, "Trailways buses will not run today," over the radio, because of the road conditions or that kind of thing. Now, that is about the extent of the advertising.

We have a strong public service commission in Charleston, W. Va., and I believe it is the best. I have been working, trying to keep the buses running in our section of the State for at least 7 years, and I have found that they are very helpful, they are fair, and we do not need ICC to take this power that they have away from them. I beg of you to please return that power to the public service commission so that we can keep the buses running, not only to provide passenger service, to provide blood that we receive—the only way that we receive blood from the blood centers into the hospitals is by this bus. A lot of the coal mines would be idled more days if it was not that they could receive parts, mining equipment parts, and it keeps them working today that they might otherwise lose if they did not get this overnight service.

Mr. SUNIA. Thank you very much, Ms. Taylor.

Congressman Rahall, do you want to do the honors once again, before we proceed?

Mr. RAHALL. Thank you, Mr. Chairman.

I introduced him in absentia a moment ago, and now I introduce him in person—Mr. Lou Capaldini, the president of the American National Bank of Logan.

Lou, welcome to the subcommittee.

Mr. CAPALDINI. Thank you.

It is a pleasure to join my fellow West Virginians here. I appreciate the opportunity to essentially do what I believe is important for all of us, and that is to make democracy, free enterprise, and hopefully, deregulation, work.

But whether in banking where, as you know, massive deregulation is taking place, or in motor bus transportation, we cannot undo in 1 or 2 years what has taken considerably more to set up. Yet we cannot wait too long, either. The democratic process and the free enterprise system must be allowed to work. Democracy and free enterprise impose responsibilities on each of us, whether in the capacity of a private citizen or a corporate citizen. We, simply stated, must work to make democracy and free enterprise work, but work in a reasonable manner. This work is not always in the legal sense of defining work, but nevertheless, it is meaningful and honorable work.

I submit and acknowledge that Trailways does have a responsibility to its shareholders to provide a maximum return on investment. I would be neither a sound banker nor a responsible individual if I failed to believe that. Part of that responsibility by Trailways, even to its own shareholders, is to make good situations work. I feel there is a good situation for Trailways in our small town of Logan, W. Va. I contend, as one person, that Trailways has not exhibited much vigor, commitment, or business intelligence. Marketing communication, including advertising, that Hilda has already referred to, but not necessarily limited to that, is nonexistent in Logan as well, Hilda. None of us can recall seeing an ad by Trailways or a schedule prominently posted or printed schedules distributed throughout the community. Logan deserves a more responsive set of actions from Trailways—a set of actions that make good business sense, but also ones that indicate a sense of societal responsibility as well.

I am very much concerned and feel that Trailways should be required to demonstrate more convincingly that it cannot make money in Logan. Very simply, I do not think that Trailways has tried very hard. In fact, there is a pervasive feeling that it has tried only feebly, hoping to have a failure.

This is a harsh indictment, I acknowledge. I could not in good conscience ask that you require Trailways to stay when, despite honorable and persistent efforts on their part, it continues to lose money. But how can you make money if you do not try?

Trailways may well not need my services or those of our small bank, but my associates and I at our small bank would be glad to help, at no charge, to prepare bus schedules, design posters, and even distribute these. Further, we would help conduct simple market surveys on travel need patterns and certain market potential. This is not idle or flippant talk. We would like to help Trailways help us.

To try to fail is to me not the American way. To try to succeed and serve is. We would be glad to help Trailways succeed. If, after bona fide and concerted good business efforts, it cannot be profitable, then the abandonment of their service in Logan is both economically and morally justified.

Thank you very much.

Mr. **Sunia**. Thank you, Mr. Capaldini.

Mr. Crabtree, have the new entry and rate provisions of the Bus Act encouraged entry into the bus market in West Virginia?

Mr. **Crabtree**. There has been no new entrant in the for-hire bus service in West Virginia in 2 years. Section 6 has been used in West Virginia in one sense, because the bus companies attempt to use section 6 and the philosophy behind section 6 as a scapegoat to support their abandonment petitions. In effect, they say, "We are clearing the way for a small entrepreneur to come in and take over this service." But I would submit that if a supercarrier, as these large carriers, cannot make a route work, with their cost of capital, their lower cost of capital, their economies of scale, how can a small businessman in this economic climate? So in that sense, that is the only way section 6 has been used in West Virginia. There have been no entrants.

Mr. SUNIA. Thank you.

Congressman Shuster?

Mr. SHUSTER. No questions, Mr. Chairman.

Mr. SUNIA. Congressman Bosco.

Mr. BOSCO. I have no questions, Mr. Chairman, but I want to commend the witnesses for their statements. I would have asked what you did about are these entrepreneurs that are springing up, such as we expected would happen, but that question has been answered.

Mr. SUNIA. Thank you.

Congressman Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Crabtree, all through this morning, we have been listening to people attempting to address this issue of rural service, which we are all concerned about, most of whom are suggesting some kind of a joint subsidy arrangement. I notice that you do not call for that. Moreover, you call in your testimony for a readjustment of the ICC regulations to make them work. Is that a fair synopsis of your statement?

Mr. CRABTREE. I do not believe it is, sir, because we, of course, adopt the philosophy and the prior notice amendment submitted by the Illinois Commerce Commission. In that particular amendment, it does indeed provide for a cooperative effort between State bodies and communities and bus companies in trying to stimulate service usage, and we would heartily endorse that particular philosophy.

Mr. SMITH. In other words, you would endorse the idea of some sort of an arrangement of subsidy between local communities, the State, and the Federal Government, to enhance rural service?

Mr. CRABTREE. We certainly would. The problem so far has been that the bus companies were at our door when the act became effective, and our efforts and resources thus far have gone to trying to build a record in these cases and mobilizing the public to at least have input, if they are interested. We have had no opportunity to indulge in the type of operation that you are speaking of, but we would be happy to take that opportunity if it existed.

Mr. SMITH. Well, I am happy to hear that, because I for one do not believe that by changing the regulations, or enforcing them or not enforcing them by the ICC is going to help us correct the problem that has been caused by this Deregulation Act across America in the rural areas. I just do not think that is going to happen.

Mr. CRABTREE. Well, you are absolutely right, sir. The law, as far as the public interest goes, is almost sufficient with the Illinois amendment, as far as the public impact portion of the test. The law is there. Our contention is, and if you will look, or even take a survey of the 20 exit cases submitted to ICC, the law in respect to the coequal part of the test is not being implemented in any manner.

Mr. SMITH. Mr. Capaldini, I live in a very small town in Oregon—maybe it is like Logan; I do not know how large Logan is, but my town is probably smaller. We were always interested in some kind of service, particularly airline service, and our community went out and solicited airline service. And I am just wondering, though what I can hear of your experience, whether you have actually gone to Trailways as a community and said, "Look, we want to help you stay in Logan. What can we do?" Or, is this the first entrance into this assistance program?

Mr. **Capaldini**. Well, I took the opportunity to state this now for the first time. We have been talking to folks there locally, but it is very difficult to really reach anyone in Trailways, except in what appears to be an adversarial relationship—hearings, for example. If there is anything you could do to get us together, we would appreciate it.

Mr. **Smith**. Well, I guess this is a beginning. Thank you.

Mr. **Sunia**. Congressman Rahall.

Mr. **Rahall**. Thank you, Mr. Chairman.

I would like to thank each of you for your testimony this morning. It was presented from the heart and from your firsthand experiences with the implementation of bus deregulation in southern West Virginia.

As each of you are aware, there was quite a bit of communication between myself and Trailways prior to and during the passage by the full House of the Bus Deregulation Act. I did engage in a colloquy before the full House with Chairman Anderson, and both he and Chairman Howard, the full committee chairman, were very understanding and very helpful in our efforts to provide suitable protections to the small communities and rural areas, and I believe we did that in the bill.

I, of course, communicate with Trailways quite often. In July 1982, just prior to passage of the act, they indicated that they had twice attempted to transfer their West Virginia operations to other operators. Trailways stated in a letter, "We are continuing to operate in light of the failure of the latest transfer proposal. We have no present intention to abandon those lines, and we have made no final decision on how to operate those lines in the future."

To carry the itinerary a bit further, on November 19, 1982—that, of course, was the date the Bus Deregulation Act became effective—I think it is worth nothing that less than 2 months later, on January 3, 1983, Virginia Stage Lines, which is a subsidiary of Trailways, filed a petition to discontinue service with the West Virginia Public Service Commission. On September 9, 1983, the ICC denied that petition, as I mentioned in my opening comments. They said discontinuance was not consistent with the public interest and because of the continuation of the intrastate routes will not "constitute an unreasonable burden on interstate commerce." Then, on September 30, 1983, the Virginia Stage Lines filed with the ICC to reopen the case, and that is where we stand today.

My question to Mr. Crabtree is, as you know, the Bus Act does give the ICC 90 days in which to act after a petition is filed. In the Virginia Stage Lines case, the petition was filed on June 13, and the case was decided on September 9, as I have related. On September 30, the carrier filed to reopen the case. This action was taken more than 90 days after the petition was originally filed.

My question is, is it your belief that the ICC has as such lost jurisdiction over this case?

Mr. **Crabtree**. Pursuant to the provisions in the Bus Act, the ICC's jurisdiction ended 90 days after the case was filed. There is no precedent in the history of Bus Act law at this point that the ICC is relying on, apparently, but we do not find this unusual, because the rules and regulations governing filings under the Bus Act have been one-sided at best since the beginning, and let me just give you a quick for-instance. When a carrier petitions for relief of a State decision before the ICC, if they submit information that generates question by the State, the State can indeed inquire within 5 days of that filing and seek data and information from the company. The company has no time limit to respond to the State. Therefore, the State has 15 days to get its statement in from the date of their inquiry. The company does not necessarily have to give that information within any time frame. And we submit that there are several rules of this nature which create an impossible burden on a State body to fight the legal machinery of the major carriers.

Mr. RAHALL. As you know, scheduling changes can be used as de facto abandonments. What jurisdiction does the West Virginia Public Service Commission have over scheduling?

Mr. CRABTREE. Pursuant to a subsection of section 17, which is the rate section, States have no jurisdiction on scheduling whatsoever, unless it is the last bus in that area.

So as long as minimum service, which is one trip per day, is maintained between points, the bus company can schedule at will. As a matter of fact, the bus company can schedule the last bus any way they care to under current provisions, and that is, of course, why we say they can write their own ticket as far as ridership statistics go. They can indeed manipulate their numbers if they so want to.

Mr. RAHALL. As Lou has mentioned in his testimony, he has offered his services to help in any way possible. I am not sure that Trailways will be knocking on the door tomorrow morning, Lou, but why would a carrier—and many people in southern West Virginia ask this question—why would they juggle their schedules and routes in such a way as to try to almost look as if they are deliberately trying to lose money and lose revenues? What would be the proper way to respond to that?

Mr. CRABTREE. I think that that again brings in section 6, where Congress appropriately freed entry on interstate bus lines, and I think that the bus companies want to definitely take advantage of section 6, and they should. However, they need resources and buses to run in these new markets, and where their markets are marginal, on a rural route where the population is less dense, and they are not achieving what they consider to be maximum profits, I believe they are using this particular means of providing no information. We have had such testimony in both cases. There is no information available as to scheduling, and people standing out in the rain. They are using this particular means, in my opinion, to manipulate their ridership and free these buses for service elsewhere.

Mr. RAHALL. Thank you, Frank.

I would like to yield, at this time, to our distinguished chairman of the full committee, the gentleman from New Jersey, Mr. Howard.

The CHAIRMAN. I thank the gentleman for yielding.

I would just like to state , for the information of those who might be concerned, a hearing of this subcommittee which was scheduled for tomorrow concerning bus weights will be postponed to a later date; it will not be held tomorrow morning.

I thank the gentleman for yielding.

Mr. RAHALL. I thank the chairman.

Let me ask one final question of you, Frank. What would you recommend, then, that we do as far as possibly granting the State more authority in scheduling, or should we do that?

Mr. CRABTREE. I believe we should, and I do not want to reregulate either, except where it appears that—there is nothing written into the law right now that imposes any conditions of good faith on the part of the carrier, and it is hard to write that in. I think the situation could be corrected if, along the lines of the Illinois prior notice amendment, where service is reduced to a minimum level, that is, there are no more than two trips per day through a point, the schedules would be subject to the approval of the State. That way, the State would have some input into scheduling, and the State could schedule a hearing and determine what is in the best interest not only of the public but obviously, if it is in the best interest of the public in terms of ridership, it is in the best interest of the company. It would at least prevent the company from manipulating schedules to free resources if the State had jurisdiction of scheduling only where minimum service is being provided.

Mr. RAHALL. Ms. Taylor, when these scheduling changes are made, what notification is given to the public and how aware are they that the changes are being made?

Ms. TAYLOR. The only way you would know that there had been a schedule change would be to visit the terminal, and it is posted in the terminal—in very small print, as a rule.

Mr. RAHALL. So would most people not know about the changes, then?

Ms. TAYLOR. They would not know about the changes, no, because very few people read the bulletin boards when they go into the station.

Mr. RAHALL. What about newspaper publication? Is there any such notice?

Ms. TAYLOR. No, no.

Mr. RAHALL. Would that help, if there were?

Ms. TAYLOR. If there were, it would, but they do not advertise by news media or by radio or TV.

Mr. RAHALL. There is no press release sent out, then, as such, notifying of schedule changes?

Ms. TAYLOR. No.

Mr. RAHALL. Lou, you have a pretty good handle on the economic situation that we face in West Virginia. How feasible do you think it would be to find a replacement for Trailways?

Mr. CAPALDINI. I think it is going to take time, and of course, that is what we need. There might be some entrepreneurs around, but we must understand—if I might classify myself as possibly one of them—the business. We are going to have to learn this business. That is why we would still—Mr. Harliss and people like him—we feel strongly that deregulation has got to occur, but if there is going to be someone able to step back in, given the tremendous difficulties we are having right now, it probably would take us a longer time to find the resources, capital, people, and the like. I would say we would need some time to do that, perhaps as much as a couple of years, to put together something, do some studies, and get some work done toward that end.

Mr. RAHALL. I thank each of you for your testimony.

Thank you, Mr. Chairman.

Mr. SUNIA. Thank you, Mr. Rahall.

Thank you very much, Ms. Taylor and gentlemen. And again, let me remind you that later on in the course of these hearings, we will have the industry representatives express their views on these issues.

Let me now call on the New Jersey Department of Transportation—Mr. Crawford, the deputy commissioner; Mr. Flynn, and Mr. Jamieson.

Gentlemen, welcome to the subcommittee.

The full text of your prepared statements will appear in the record at this point.

[Statements referred to follow:]

TESTIMONY OF JAMES A. CRAWFORD, ACTING ASSISTANT COMMISSIONER, NEW JERSEY DEPARTMENT OF TRANSPORTATION

Mr. Chairman, I am James A. Crawford, acting assistant commissioner of transportation for New Jersey. I am appearing here today on behalf of Commissioner John P. Sheridan, who is also the chairperson of the board of New Jersey Transit, the statewide public transportation agency. I appreciate the opportunity to testify before the oversight committee on the impact of the Bus Regulatory Reform Act of 1982. The thrust of my testimony will focus on the Interstate Commerce Commission's implementation of the "Bus Act". The ICC is ignoring important provisions of the act which Congress incorporated for the specific purpose of addressing New Jersey's unique busing environment.

Over two years ago, the House of Representatives initiated the legislative effort which culminated in the enactment of the "Bus Act". While the effort was still in the formation stages, the State of New Jersey went to the House Committee on Public Works and Transportation and provided information on the potential adverse effects that bus deregulation would have on the State. Specifically, the State alerted the House committee to the presence in New Jersey of two unique busing environments which, if subjected to deregulation, would shortly pose public interest problems. First, there was New Jersey's extensive interstate commuter bus operations. These bus operations constitute the heartbeat of New Jersey's commuter transportation service. Second, there was the regular route bus service to Atlantic City, a bus market that was growing rapidly and fast reaching the saturation point. At that time, Atlantic City bus traffic was already creating severe bus congestion problems on the roadways to Absecon Island, the barrier beach strip on which Atlantic City is located. The House of Representatives responded to the State's concerns by placing safeguard provisions in the "Bus Act" which covered the aforesaid problem areas. The State was encouraged by this development.

A few months later, when the Senate considered the "Bus Act" proposal which the House had passed, New Jersey once again contributed to the effort. While the Senate made significant changes in the House bill, the thrust of the safeguards New Jersey sought remained in the legislation.

I am here to tell you that in spite of what Congress did, the State of New Jersey's worst fears have been realized. The State has experienced serious difficulties in both interstate commuter bus service operations and regular route service to Atlantic City since the ICC has implemented the "Bus Act". These problems are a result of flaws in the act, but rather the ICC's disregard for such safeguard provisions. We want this committee to know about the situation. If congressional intent is not enforced, New Jersey will face a health and safety crisis as a result of unregulated buses.

To fully understand why Congress included the New Jersey provisions in the act, this committee must understand the nature of bus operations in New Jersey.

Lying as it does between New York and Philadelphia, New Jersey is home to tens of thousands of commuters who daily ride intercity carriers to and from work. Some 300 carriers hold ICC certificates, with most providing daily commuter and charter service. The commuter market is split between State-owned carriers (60 percent), and independent privately-owned carriers (40 percent).

Many of these State supported and independent carriers also provide local, urban type intrastate transit service. Intrastate service is an integral part of the public transportation network which connects New Jersey's urban centers to each other and to the surrounding suburban locations. The continued provision of essential urban bus services is directly linked to the fiscal soundness of commuter bus service, since commuter bus operations help to defray the costs of unprofitable urban routes. Without viable commuter bus service, many carriers would have to abandon intrastate operations. Such actions would undermine the State's commitment to revitalize the economically depressed urban centers of New Jersey, and would leave thousands of urban residents without essential transportation.

Whereas intrastate urban routes are the backbone of the local public transportation system, commuter bus service is the primary public transportation mode available to New Jersey citizens who work in Manhattan or Philadelphia. Over 300,000 commuter bus trips are made daily which otherwise would have to be made by automobile over a highway system which is at, or near full capacity.

Commuter service in New Jersey is unique because of the numerous operators and the intense competition. Unlike long-haul intercity carriers, the commuter bus industry is not dominated by a few major carriers. With park and ride opportunities and parallel bus routes within reasonable distance, competition for commuter patronage is strong. Many areas have several private operators competing among themselves as well as against the State-owned carriers. Riders do not lack options as to the bus company they elect to patronize. Moreover, the profitability of commuter bus operations is at best marginal.

Unlike the long haul intercity service, commuter bus operations depend on strong ridership at only two points during the day, during the morning and evening rush hour periods. Commuter service must build up a steady clientele in order to be profitable. Indeed, reflective of the tenuous nature of profits in this area is the fact that in the last year, three commuter services have succumbed to competitive pressures and ceased operations, Manhattan Transit Co., Somerset Bus Co. and Lincoln Transit. Certain other carriers have only been able to sustain their operations through State and Federal subsidies.

As for those private bus companies in New Jersey that do manage to operate at a profit, they do so through highly efficient operations. Moreover, while a select few of these carriers have been able to maintain reliable and healthy commuter operations over a considerable period of time, they remain sensitive and vulnerable to changes in ridership. In short, commuter bus service in New Jersey is highly competitive. It is a finite market which requires special protection because of its importance to the area's economy.

When Congress considered the Bus Regulatory Reform Act, it recognized the unique nature and the need for continued vitality of interstate commuter bus operations. Specifically, it incorporated a provision making it a national priority to "provide and maintain commuter bus operations." There was good reason for establishing this priority. Healthy and reliable commuter bus service is essential for insuring the mobility of our Nation's work force. This holds especially true in large metropolitan areas where a strong commuter bus network enables workers in surrounding suburbs to get to their jobs in urban centers.

New Jersey, more than any other place in the Nation, relies on interstate commuter bus operations. The State has worked over the years to insure that this essential service is provided in a reliable and stable fashion.

It is for these reasons that the State was able to persuade Congress that additional safeguards were indeed in this area. Accordingly, at the special request of New Jersey, Congress developed a commuter bus test and a public interest test which applies to excessive regular route service being operated in New Jersey.

The State of New Jersey is concerned that in implementing the "Bus Act" the ICC has ignored congressional intent. The ICC has liberally authorized several new entrances into the commuter bus market in spite of strong State protest. These entries, whose service is often concentrated during profitable peak periods, jeopardize the stability of existing carriers, who provide a total service, beyond peak periods.

An instance in point is the application of Caravan Bus Lines, Inc., Sub. No. 15. In this case, Caravan made application over a substantial portion of the regular route service of a long existing carrier, Lakeland Bus Co. After assessing the impact, the State of New Jersey joined the affected carriers in protesting to the ICC. Nevertheless, the ICC approved Caravan's application, and in the process, it treated the State's protest in a cursory manner. This action reflects the fact that the procedures which the ICC adopted to implement the Bus Act do not provide for significant input from an affected State as required in the National Transportation policy of the Act. The Caravan application represents one of several similar applications of carriers seeking to provide interstate commuter bus service in New Jersey which may have an adverse effect on the stable commuter bus network.

The ICC's granting of authority to Caravan set a dangerous precedent. It signaled that the ICC is not interested in invoking the safeguards set up to protect commuter bus service. The Commission is bent on deregulating the industry regardless of the type of operation or the likely adverse impact. Further decisions such as the Caravan case threaten the future of the entire intercity commuter bus industry. In the end, the public will be the ones to pay for such myopic policy.

New Jersey's other unique problems regarding the provision of bus service centers around the market to Atlantic City. Accompanying the explosive growth of the hotel and casino industry in Atlantic City, there has come an equally explosive growth in bus operations providing service to these casinos. From 1980 to 1982 alone, the number of casino buses entering the city increased from 78,000 to over 300,000. This constituted a staggering percentage increase of over 300 percent. All vehicular traffic must funnel onto bridges for ingress to and egress from Atlantic City. Needless to say, in light of this convergence of traffic, it is easy to see how the flood of buses has created tremendous congestion in the Atlantic City area.

For its part, the State has addressed the bus traffic to and from Atlantic City in a reasonable manner. Its regulatory process has evolved in response to the area's changing health and safety needs. The best example of this response is the creation of the Atlantic County Transportation Authority, a speical local regulatory authority empowered by the State to deal specifically with Atlantic City's traffic problems. The area needs to be monitored on the local level because of its unique character.

The State is concerned that the ICC is disregarding the clear meaning of the language in the Bus Act which applied to regular route transportation of passengers provided in one State which is the nature of a special operation. In Recognizing the unusual circumstances confronting New Jersey, Congress responded by purpose fully exempting from the purview of the ICC any regular route service in the nature or special operations. The report from the House Committee on Public Works and Transportation on the Bus Act clarifies the limitations placed upon the ICC with regard to interpreting this language. The Committee's report made explicit reference to Atlantic City bus service. This section of the law remained unmodified during Senate consideration and was incorporated without any change in the final act.

The congressional intent, which is so explicitly laid out the the House committee report, has not been the focus of the ICC's attention. The case of Olympic Trails Bus Co., Inc., MCC-138146 Sub. 4, Demonstrates this point. Here applicant ostensibly sought a grant of authority to provide a regular route interstate service between points in New York, N.Y. and Atlantic City. Along with this underlying route, it also requested authority to provide service to all intrastate intermediate points. A fair reading of the application indicated that the carrier planned a route where 95 percent of its service would be in New Jersey. Moreover, the application initially included references to casino packages which would be applicable to patrons riding the applicant's buses to the 'Atlantic City casinos. This type of operation would clearly fit the Bus Act definition of a regular route in the nature of a special operation.

The State of New Jersey protested this application. Unfortunately, the ICC once again summarily denied the State's protest. In the process, it opened the flood gates for carriers such as Olympic, which desire to circumvent State regulatory authority through subterfuge applications. This was, in fact, one on New Jersey's main concerns during the proceedings of the passage of the Bus Act.

Since the Olympic decision, a number of other carriers which either already possess interstate regular route authority to Atlantic City or are seeking such interstate authority, have petitoned the ICC for intrastate authority as well. For example, applications have been filed by Cape Transit, Pocono Mountain Trails, Inc., C.L.D. Transportation Co., just to name a few. I have a more extensive list available which I shall submit for the record. The ICC continues to pay little heed to the State's concerns over these applications. New Jersey has continued to file protests to these applications in an attempt to get the ICC to recognize the preemptive language in the Bus Act.

At present, the New Jersey Department of Transportation has authorized over 30 carriers certified to provide regular route intrastate service from various points in

New Jersey to Atantic City casinos. These carriers operate more than 80 authorized routes. However, of the anticipated 300,000 buses that will travel to Atlantic City in 1983, the majority will originate out of State. Consequently, they will come under the jurisdiction of the ICC. Our fear is that if the Commission does not enforce the preemptive language contained in the act, these companies will receive authority to service areas along routes in New Jersey to Atlantic City without assessing the health and safety impact. In the case of Atlantic City, New Jersey is in the best position to regulate bus opertions servicing points in the State. Congress recognized this when it drafted the "Bus Act". It's time the ICC recognized what Congress saw fit to legislate.

Currently, New Jersey is examining its future with regard to bus transportation and its regulation. The problems we are now having with the Interstate Commerce Commission's implementation of the "Bus Act" have prompted the State to look at other regulatory alternatives. We think that either a joint borad or the Washington Area Metropolitan Transit District (WAMID) are concepts that may hold a solution to New Jersey's unique problems. Essentially, after reaching agreement with New York and Pennsylvania, we may ask Congress to exempt interstate bus service from the Interstate Commerce Act where the majority of the riders originate in New Jersey. However, while we see this as a potential longterm answer to our problems, our immediate concern is that the ICC be directed to pay heed to congressional intent embodied in the "Bus Act" and enforce the existing safeguard provisions.

STATEMENT OF BERNARD F. FLYNN, JR.

To the honorable chairman and members of the committee, my name is Bernard F. Flynn, Jr. I reside at 156 Laurel Hill Road, Mountain Lakes, New Jersey, these past 40 years.

I have practiced laws exclusively before the Interstate Commerce Commission since 1935 and consequently am familiar with the practices and development of the law since 1935 to date.

In 1948 I organized a bus company, known as Lakeland Bus Lines, Inc., to afford myself and Morris County neighbors more adequate transit between New York City and the lakeland area of Morris County, in which I reside, from an initial operation of 5 buses to the present operation of 73. We aided in the growth of the area, and the area's growth aided us.

Expansion of our routes and service has permitted more and more people to locate in New Jersey who work in New York, so that our operation today is that of a commuter bus line, handling 7000 passengers per day. It is vitally essential to the commuter, to maintain their jobs, that they receive without fail precise timely pick-ups, express service, and certainty of on-time arrivals in New York, and equally important to the businesses in New York City.

I address you today with the credentials of 48 years of practice before the Interstate Commerce Commission, and 35 years as the founder and President of one of the few independent non-subsidized commuter bus operators in the New York-New Jersey territory.

This territory has experienced the bankruptcy of every commuter railroad facility; in New Jersey, the West Shore Railroad, The Erie, Lackawanna, Penn Central, Lehigh Valley, Rahway Valley, Jersey Central, the Hudson & Manhattan tube crossings and, finally, Conrail. In New York, the New Haven, Long Island, and New York Central railroads. Public authorities have had to be established to take over and operate the bankrupt facilities. In New York, it is the Metropolitan Transportation Authority; in New Jersey it is the New Jersey Department of Transportation and its operating entity, NJ Transit. These agencies have inherited plant structures in horrible condition through years of deferring maintenance and investment in plant structures. Existing services are maintained only through public subsidy, Federal and State, and bond issues to supplement inadequate fare structures.

The task of continued maintenance of service is in the hands of these public authorities, aided by State and Federal funds, and a few independent operators, such as ourselves. We are few, for only in the past few years Transport of New Jersey failed, even ith subsidies, as did Somerset Bus Lines, Manhattan Transit, Intercity Bus Lines and its subsidiary companies, and Lincoln Transit, all of whose operations were taken over by the State agency, NJ Transit.

For brevity I am going to assume that your Committee has an awareness of the critical conditions prevailing in transit in the New York-New Jersey area. I am sure the Chairman, representing New Jersey, has such understandng, but I submit that in most of the United States, other than a few principal cities, the work "commuter" is an unknown word, and commuting an unknown experience, and, other than the New York-New Jersey area, the principal cities where commuting exists are controlled by State agencies which are personally familiar with the problems of that area.

The Port Authority terminal is the terminal for all commuter bus lines to and from New Jersey and the City of New York, and it is located in New York state, and even through it is connected by ramps directly into the Lincoln Tunnel, these few feet in the City of New York places the entire New Jersey operation under the jurisdiction of the Interstate Commerce Commission, which processes entry applications by a Review Board of three persons in Washington, D.C., which has jurisdiction over the entire 50 states.

The Commission's attitude is already widely known as determined in every way possible to deregulate both the trucking and the bus industry, even advocating the sunsetting or death of their own Commission, To do so they choose and seize upon certain language in the bus act to justify broad rule-making procedures to achieve these purposes.

Under the bus act, pertinent here, is their hasty adoption of rule Ex Parte 55, sub 56, hurriedly enacted to become applicable the date the bus act became effective, November 19, 1982.

Lakeland is now involved in a proceeding before the Commission involving the entry application of a company known as Caravan Coach Lines, Inc., in which its protest is joined by over some 100 public witnesses, the United Transportation Union, Community Bus Lines, NJ Transit, and the Department of Transportation of the State of New Jersey.

While there is a request for denial of the application by protestants, protestants and the public point out that at the very least the Commission should follow the traditional practice of setting the matter down for a public oral hearing. The Commission denied such requests although heretofore, except in most inconsequential applications, any proposals for new or changed routes in the northern New Jersey area were set down for Joint Board proceedings at public hearings, and this was done with the recognition that the authorities in the immediate affected areas, and the public therein involved, should have the opportunity of hearing the proposals and expressing their opinions as to the matters involved in the issues that presented themselves.

Incidentally, the application of Caravan Coach Lines, Inc. is the first coming before the Commission under the new act, and in law is known as a case of first impression, and the regulatory agency, such as the Interstate Commerce Commission, would be presumed to be sufficiently interested in the proper administration of the act to set the matter for hearing so as to develop a complete record of all pertinent facts helpful in proper determination of the issues.

However, only by filing an action in the United States Court of Appeals for the Third Circuit by Lakeland Bus Lines, and joined in by the New Jersey Department of Transportation, was the Commission's order granting the application stayed. The Commission further admitted, in part, that its procedure under Ex Parte rule 55, sub 56, denied due process, and they made a slight amendment to the rule, permitting protestants 10 days to file rebuttal statements.

In my opinion this was only done to more carefully re-write an order granting the application, using their customary "boiler plate" language that "under all of the facts and evidence in the record we conclude the application should be granted", thus requiring no more than a request for authority, and based only upon their presumption of fitness and ability they require only that a certificate of insurance in the minimum amount required by the Commission be filed by the newly certificated applicant.

In the declaration of policy of the Congress, the Congress advised clearly that in its administration of the act that it be administered in conformity with the criteria laid down in the policy of the Congress. The Commission chooses to ignore it, for in no way can the issues be examined into except by inquiry into an examination of the evident facts needed to be obtained including, of course, an opportunity of the public affected to be heard.

Again, to be brief, this becomes apparent when one reads the criteria set down in the national transportation policy set forth in the act, none of which the Commission has inquired into, or apparently cares to inquire into, and yet we submit should be controlling upon the Commission in processing an entry application, certainly such as this, which concerns the largest commuter area in the entire world.

Our concern, and that of the State of New Jersey, is to continue to render adequate service to the public, for it is a difficult burden for all of us under existing circumstances. It will be an impossible one if the Commission, deliberately ignoring the national transportation policy, which it is doing, should permit unrestricted entry to any and all persons just for the asking. To do so would make entry the "regulatory charade" which the Senate committee in its hearings pointedly warned was not the intent of the legislation.

These oversight hearings are timely, for may I suggest that the regulatory reform act of 1982 carried forward administrative philosophy urged on the Congress that began with the deregulation of the airlines in 1978, and the trucking industry in 1980, and with it the concept of bringing about increased competition in these fields.

Truck operation is entirely dissimilar to passenger traffic, so comparisons cannot be made.

Increased competition and ease of entry on airline passenger movements is now becoming apparent through the failures of airlines, and near failures of those left.

The bus industry also has different characteristic. Basically, only two carriers exist and dominate the intercity system throughout the nation—Greyhound and Trailways—with limited competition in some areas by regional carriers. The bulk of bus operations is intracity or intrastate passenger service, of no interest to us here.

The next largest interstate operation, and the largest of all, is that of special and charter operations conducted throughout the United States. In this operation, it is all handled under special arrangements or contracts and increased competition can but divide the traffic amongst the existing operators, and if that is the philosophy of the Congress, well and good, but in each instance such operators, when operating their equipment, operate it under contracts that cover the price of a fully loaded bus, but in the commuter operation, it requires exact timely service and operating time performance in peak periods only of 1½ hours in the morning and 1½ hours at night, with the equipment and work force idle the balance of each day, but it nevertheless must be paid for, and to permit competitive or duplicate service on these routes and in these operations can but dilute the traffic on these routes, with the loss of traffic and revenue that will destroy the ability of existing carriers to perform their functions.

When the bus act was adopted by the Congress with its provisions applicable to the 50 states, few of the legislators could hardly be mindful of commuter operations, as they did not exist or affect their constituents, but the Congress did safeguard, in part at least, regular route commuter operations by requiring that entry be consistent with the public interest.

While interstate commuter service is found only in isolated areas of the nation, but principally and most vitally affected in the New York-New Jersey operation, the people of this area are also citizens of the nation and are entitled to considerate administration of the reform act in consonance with their needs.

The essential change in the 1982 act over that of the Motor Carrier Act of 1935 results in removing the burden of proof upon the applicant under the former act of proving public convenience and necessity, and placing the burden now upon protestants to show that the granting of an application will not be in the public interest.

To do this, protestants and the public must be afforded the opportunity at a public hearing. This does not mean that the Commission must adopt a practice of assigning all entry applications to oral public hearings, but only those where the public interest is involved, and particularly, if any are ever to be heard, certainly in this present case of first impressions under the new act, in the world's largest commuting area.

This should be apparent if we believe we are a democracy, and are governed by the consent of the governed.

May I suggest that now, before irreparable damage is done, your committee advise the Commission that the policies you have enumerated to guide that Commission are not idle words, and that the Commission, which is an agent of the Congress and not the Executive Department, shall be expected to observe such admonitions so as to adequately and effectively protect the public interest, which interest in the New York-New Jersey area can only be accomplished through public oral hearings.

I am available to answer any questions that may be asked.

STATEMENT OF SAMUEL B. JAMIESON, JR., VICE PRESIDENT, SHORT LINE (HUDSON TRANSIT LINES, INC.)

My name is Samuel B. Jamieson, Jr. and I am Vice President of Hudson Transit Lines, Inc., commonly known as Short Line of Mahwah, New Jersey.

I am authorized to appear here today on behalf of the New Jersey Motor Bus Association, Inc.

The New Jersey Motor Bus Association is comprised of most of the major privately owned bus companies in the State of New Jersey providing regular route interstate and intrastate passenger service.

Both commuter and non-commuter services are provided throughout the State with over 100,000 passengers transported daily in interstate commerce most of which are commuters.

Early in the administration of the Motor Carrier Act, the Interstate Commerce Commission (Commission) recognized the uniqueness of interstate transportation in the New Jersey Mass Transportation area by requiring that grants of regular route authority have street-by-street descriptions of the routes awarded by the Commission. The Commission in adopting regulations permitting regular route motor carriers of passengers to serve points off their regular routes, exempted the NY-NJ Mass Transportation area from such authorization. The Commission recognized that the highly competitive situation involved in the NY-NJ Mass Transportation area required that carriers be limited in the territory they were authorized to serve.

Nowhere else in the United States is there commuter bus service comparable to that provided in the NY-NJ Mass Transportation area. There was, at one time, such an area involving Washington, D.C. and parts of Virginia and Maryland, but their area, which had a similar uniqueness, was removed from the jurisdiction of the Commission. Services in that area are now strictly regulated by local public authority.

The commuter bus industry in the NY-NJ Mass Transportation area is in dire financial condition as evidenced by the fact that many bus companies have gone bankrupt or out of business and public authorities had to take over the discontinued services. Authorizing additional commuter bus competition in the highly competitive commuter business in the NY-NJ Mass Transportation area will not generate additional passenger traffic, but will merely divide existing traffic among more carriers thereby making it unprofitable for any carrier to exist. Providing commuter bus service is a very high cost operation which requires high load factors in order to exist. The diversion of only a small number of passengers per bus could render a commuter bus service unprofitable thereby leading to deterioration, reduction or destruction of the service. This unique situation in the NY-NJ Mass Transportation area requires special consideration and special handling by the Commission.

In November of 1982 the Bus Regulatory Reform Act of 1982 became law. Said Act called for ease of entry for motor carriers of passengers, while at the same time the Act contained provisions to "provide and maintain service to small communities and intrastate bus service", and "provide and maintain commuter bus operations". These provisions were included in the Act only after lengthy and numerous public hearings held by both the House and the Senate.

After the adoption of the Bus Regulatory Reform Act of 1982, (Bus Act) a decision of the Commission, in the case of Caravan Coach Lines, Inc., Docket No. MC-138730 Sub No. 14, decided March 10, 1983, contained a concurring opinion by Review Board member Chandler which stated as follows:

"The unique character of interstte motor bus service in the New Jersey portions of the New York suburban area is amply demonstrated by the lengthy discussion in this decision of the operations performed by the four carriers which are parties to this proceeding. In this territory, many different bus companies operate over fixed routes which overlap, criss-cross, and generally lie close to those of their competitors. Competition is vigorous and often involves bitter disputes. Many bus operations are publicly subsidized, and it is unlikely that any can be conducted today at more than a marginal level of profitability.

"The problems presented to a regulator are—entirely local, and it has long been absurd that they should be regulated by the Federal government as part of a statutory scheme necessarily directed primarily at long-haul intercity and charter bus operations conducted on a national scale. Unfortunately, however, the local jurisdictions have not been able to cooperate to the extent of agreeing on a plan for multi-State regulatory compact, such as the one that governs bus service in the Washington, DC, metropolitan area, under which esentially local services could be regulated in a manner designed to meet local needs. Thus, parochial disputes such as the one before us here.

"If we must regulate this kind of transportation, we must do so, as far as possible, with an understanding of and sympathy for the local situation. The issues raised by the New Jersey bus cases are different from those presented in the great majority of other applications coming before us. At times, therefore, different standards must be applied. For this reason I am prepared to agree that an exception to the Commision's usual policy of not restricting regular-route carriers against service at intermediate points is justified."

Despite the Commission's long standing recognition of the uniqueness of motor carrier transportation of passengers in the NY/NJ Mass Transportation area and that such uniqueness required special principles and rules in the administration of the Interstsate Commerce Act, the Commission, since the adoption of the Bus Act, has failed to treat the NY-NJ Mass Transportation area as being unique, but has routinely granted, to this witness' knowledge, every regular route application in the NY-NJ Mass Transportation area, despite objection of other carriers, that such grant of authority was not consistant with the public interest. The opinion of board member Chandler, in the Caravan Sub. No. 14 case stated above, has not been followed by the Commission in the other cases. Congress did not intend the administration of the Bus Act to be administered by the Commission as a regulatory charade. To my knowledge, the Commission has not denied a single regular route application anywhere in the United States where the public interest test has been raised by protestants. The failure of the Commission to deny any case on the public interest test in almost a year since the enactment of the Bus Act certainly leads to the strong inference that a regulatory charade is being conducted in the handling of applications under the Bus Act. This inference is reinforced by the recent testimony of Chairman Taylor with respect to the Commission's handling of property carrier cases under the 1980 act, which eased the entry for property carriers. In recent testimony, Commissioner Taylor described the Commission's regulation of property carriers as "a shuffling of papers" or words to that effect. Since the adoption of the Bus Act it appears that the "shuffling of papers" mentality applied to the property carriers is being similarly applied to passsenger carrier applications, despite the fact that the Bus Act contains protective provisions relating to commuter bus operations, intrastate bus service and service to small communities.

It is true that the Bus Act envisioned greater competition among carriers, but Congress did not intend that competitive authority be granted by the Commission in any and all circumstances regardless of the impact on commuter service, intrastate bus service and service to small communities. The Commission in its decisions since the enactment of the Bus Act is evaluating the concept of benefits of competition to such a high level as to completely overwhelm the other factors which Congress intended the Commission to consider in determining whether or not a grant of authority is consistent with the public interest. Even though the Commission in its decisions give lip service to those other factors, i.e. commuter bus operations, intrastate bus service and service to small communities, in practical application, the Commission has given little, if any weight to those factors in deciding cases.

The following are examples where the intent of Congress has not been upheld. If service to the small communities and the commuter services presently being provided are to be maintained, it is necessary that Congress take whatever action is necessary to see that the intent of Congress is upheld.

In application to the Commission for operating authority by Adirondack Transit Lines, Inc. Docket No. MC 2835 Sub 47, and by Pine Hill-Kingston Docket No. MC2060 Sub 18, the Commission granted both applications without properly protecting the existing carrier's commuter bus operations and its service to small communities. In both of these cases, the applicant, both prior to making the application and after the application was protested, offered restrictions and amendments that would have attempted to provide protection to the existing commuter bus operations. The Commission apparently adopted an unwritten policy contrary to the intent of the Bus Act and refused to accept or impose restrictions on any application. It is interesting to note that nowhere in the Bus Act does it indicate that such restrictions are not to be accepted by the Commission.

In Eagle Bus Line Docket No. MC 163163 Sub 3, the applicant, Eagle Bus Lines, restricted one of its proposed routes, which restriction was eliminated by the Commission. The proposed restriction as offered by Eagle Bus Lines would have protected the existing operators providing commuter bus service over the same highways, serving the same communities.

In Caravan Coach Lines Docket No. MC 138730 Sub 15, the Commission granted the application in its entirety without proper evaluation of its effect on existing commuter bus operations and service to small communities.

In the Caravan Coach Lines MC 138730 Sub 16, the Commission similarly granted the application in its entirety without giving proper consideration to existing commuter bus service.

The cases cited above are examples where the Commission has failed to uphold the provisions contained in the National Transportation Policy Section of the Bus Act as shown in Section 5(a)(2) (E) and (F). They further are contrary to 49 U.S.C. 10922(c)(3)(C) adopted by the Bus Act.

A further concern is the Commissions failure to uphold 49 U.S.C. 10922(c)(2)(H) adopted by the Bus Act. This section provides that the jurisdiction of the Commission to grant intrastate regular route transportation shall not apply to any regular route transportation of passengers provided entirely in one state, which is "in the nature of a special operation". The intent of such provision is described in report No. 97-334 of the House Committee on Public Works and Transportation accompanying the Regulatory Bus Reform Act of 1981, wherein it is stated on page 35, that said report is as follows:

"In addition, the Commission should understand that any regular route transportation authorized under the provisions of paragraph (2) does not include authority to transport passengers in sightseeing or pleasure tours, in any tour service which the passengers have a strong community of interest other than transportation, or in any other type of service normally characterized by the Commission as 'special operations'. For example: *a carrier certificated under the provision of paragraph (2) would not be authorized to transport passengers from a point in New Jersey to Atlantic City if such transportation included any element of the tour service typically offered to the patrons of gambling casinos.*" (emphasis added.)

The following cases are examples of the Commission's failure to uphold 49 U.S.C. 10922(c)(2)(H) adopted in Section 6(b) of the Bus Act pertaining to regular route operations in one state which are in the nature of special operations.

In C.L.D. Transportation Docket No. MC 146473 Sub 8, the applicant filed for a route between New York, New York and Atlantic City, New Jersey, seeking intrastate authority over the proposed routes, as well as interstate authority. The Commission ignored the protective provisions of the Regulatory Reform Act and granted both the inter and intrastate authority. The service intended to be provided by the applicant was clearly of the nature of special operations as indicated by the verified statement of the applicant's president, wherein he stated: "In Atlantic City, patrons will be discharged and picked-up at the casino of their choice, of which there are now nine. Many casinos offer special bonus incentives, and applicant will cooperate with the casinos in these promotional efforts to the extent necessary and proper." The application was supported by Atlantic City casinos indicating that the nature of the service was that of special operations. Upon review, the Commission granted the intrastate authority and incorrectly stated in its decision as follows: "The proposed operations are not in the nature of special operations, since they do not include the usual features, such as meals or sightseeing, which characterize such service. Applicant will provide a scheduled regular route service and, although it proposes to cooperate with the casinos' bonus incentive programs to passengers, we fail to see how this is sufficient to transform applicant's proposed service into special operations. This particular practice is a matter primarily between the casinos and their potential patrons, and does not affect the nature of applicant's service. It is common for the casinos to offer such bonuses to potential patrons upon their arrival. The fact that those bonuses are offered when the passengers exit the bus, rather than at some subsequent point in time, a matter of convenience and does not serve to change the character or the proposed operations". There have been other cases similar to that of C.L.D., wherein the Commission's action is ignoring the intent of Congress. It is interesting to note that the Commission apparently creates new policies to fit their needs to fit the cases before them.

Said policies are not consistent with each other nor consistent with the intent of Congress. In the above noted C.L.D. decision, the Commission stated that the proposed service was not that of special operations. Yet, in Capitol Bus Company v. Catawese Coach Lines, Inc. No. MC-C-10824, where the type of service operated by Catawese was the same as that proposed by C.L.D., the Commission took the position that it was, indeed, special operations. Which are we to believe?

We are also concerned that a number of applications have been filed seeking both interstate and intrastate regular route authority where it appears that the route is not a bona-fide interstate route, but was a subterfuge in order to obtain intrastate authority for purely local service. We believe that Congress intended that intrastate authority only be granted where it was incidental to a bona-fide interstate route. We do not believe that a route designed in a circuitus and time consuming manner in order to convenience intrastate passengers and which bypasses a faster and more direct route which would convenience interstate passengers should be granted by the Commission. Using an interstate route as a subterfuge for obtaining intrastate authority usurps the proper jurisdiction of the States to control local transportation.

Further, we do not believe that a route which serves a very small mileage in one state but very large mileage in a second state should be granted intrastate authority in the second state since the route is essentially intrastate in character.

To compound the problems noted above, we have yet to find where the Commission has accepted a protestant's statement of facts concerning their loss of revenue and irreparable harm as the result of a grant of authority to a new entrant.

The Commission, it appears, continuely rejects and ignores the protestant's pleading by characterizing such pleadings as merely being speculative or mere assertions and are therefore rejected.

It is obvious by the foregoing, that the Commission is merely on a course of action based on their own desires and policies rather than that of the intent of Congress, and we believe that action must be forthcoming from Congress at once, before the entire essential services of this nation are destroyed!

Mr. SUNIA. Please proceed.

TESTIMONY OF JAMES CRAWFORD, ASSISTANT COMMISSIONER, NEW JERSEY DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY FRANK J. FITZSIMMONS, DIRECTOR, OFFICE OF REGULATORY AFFAIRS; BERNARD F. FLYNN, LAKELAND BUS CO., NEW JERSEY; AND SAMUEL B. JAMIESON, JR., VICE PRESIDENT, SHORT LINE, HUDSON TRANSIT LINES, INC., ON BEHALF OF NEW JERSEY MOTOR BUS ASSOCIATION, INC.

Mr. CRAWFORD. Mr. Chairman, my name is James Crawford. I am an assistant commissioner for the department of transportation, and I have with me Mr. Frank Fitzsimmons, our chief regulatory officer in New Jersey.

I want to thank you for the opportunity to appear and testify today and to express what are perhaps somewhat different opinions regarding the ICC's regulation and enforcement of the Bus Regulatory Reform Act of 1982.

I want to begin by saying flat out that New Jersey believes that the ICC is ignoring or at least misinterpreting important provisions of the act which Congress incorporated for the specific purpose of addressing New Jersey's unique busing environment.

New Jersey has two specific issues that are involved. First is the extensive interstate commuter bus operation, operations that are basically intrastate, with the final destination across the river, in either Philadelphia or New York. The second is the regular route service to Atlantic City, a bus market that is growing rapidly and fast reaching a saturation point, not so much in terms of the market, but in terms of the ability of the highway system, both of New Jersey and Atlantic City, to handle the buses once they reach their destination.

The State has experienced serious difficulties in both the interstate commuter bus service operation and the regular route service to Atlantic City since the ICC implemented the Bus Act. These problems are not a result of flaws in the act, because we believe that Congress, after serious discussions with New Jersey's representatives and members of the bus industry, recognize these unique situations and provided provisions that would adequately address them, but rather because the ICC seems to disregard such provisions and has acted as if they did not exist.

Lying as it does between New York and Philadelphia, New Jersey is home for tens of thousands of commuters who daily ride innercity and interstate carriers to and from work. Today some 300 carriers hold ICC certificates, with most providing daily, commuter, and charter service. And while the commuter market is split between State-operated transportation services, with New Jersey

Transit handling approximately 60 percent of the market, 40 percent of the market is handled by private carriers, and many of these private carriers are independent and operate without either Federal or State subsidy. In fact, it is these commuter services that frequently provide the carriers with sufficient revenues for them to run interstate service at no subsidy to the State—an important provision if we are to meet the goals of the overall Bus Act and the goals of other transportation acts which would reduce Federal subsidies and provide a more uniform system for bus service.

Today, New Jersey has over 300,000 bus commuters, making daily trips that would otherwise have to be made by automobile over a highway system that is far above capacity in terms of what is normal standards. This commuter service in New Jersey is unique because of the numerous operators and the intense competition. While we rarely have more than one operator on a single street, the urban character of much of the service means that the riders themselves have the capacity to pick and choose between different operators through the use of park-and-rides and through service that frequently is only less than a mile apart. That character of competition does exist in New Jersey, and it is something that we are trying to encourage and something that we are trying to make sure continues to operate effectively. What we find ourselves facing is a situation where someone can come in, where a bus operator can come in, with an ICC interstate service permit and pick up the cream runs during those morning or evening peak hours, and by operating only a few buses, achieve great success and high profitability, but leave that other service that is necessary for the cream to exist in jeopardy.

In the last year, three commuter operators have succumbed to competitive pressures and ceased operation in New Jersey. But for the most part, the private bus companies of New Jersey are healthy and we hope that they continue to operate at a profit, and they do so because they are highly efficient and competitive operations.

When Congress considered the Bus Regulatory Reform Act, it recognized the unique nature and the need to continue the vitality of the interstate commuter bus operations. Specifically, it incorporated a provision making it a national priority to provide and maintain commuter bus operations. And there were good reasons for this priority. The ICC, however, has liberally authorized several new entries into the commuter bus market, in spite of strong State protest, and without providing the State adequate opportunity to review fully the arguments made for entry of these new services. These new services often concentrate during profitable peak periods, on few runs, and jeopardize the stability of the existing carriers, who provide total service—that is, service not only during the peak period, but all day.

I would like to call the committee's attention, if I might, to the ICC's recent decision regarding the authority of Caravan Bus Lines, which would permit that carrier to operate the type of service that I am talking about and which we feel sets a dangerous precedent. It signaled that the ICC is not interested in invoking the safeguards set to protect commuter bus service, but rather, is treating this as simply another part of an overall deregulation activity.

Addressing Atlantic City service for a moment, I might point out that from 1980 to 1982, the number of casino buses—or rather, the number of buses, because they are not all casino buses—entering the city increased from 78,000 to 300,000. That is a lot of buses entering Atlantic City; over 1,000 buses a day are now entering Atlantic City. This constituted a staggering percentage increase of over 300 percent, and yet all vehicular traffic must funnel across the few bridges for ingress and egress to Atlantic City. Because of the unique problems that we are now facing, the State has authorized a county transportation authority the right to control the actual timing of those buses, and yet we have no control even over whether a carrier with an interstate certificate can add additional service totally within New Jersey, operating to and from Atlantic City.

Recognizing the unusual circumstances confronting New Jersey, Congress previously responded by purposefully exempting from the purview of the ICC any intrastate regular route service in the nature of special operations. Mr. Chairman, we believe that most of the service operating to and from Atlantic City is in fact regular route service in the nature of special operations.

The report of the House Committee on Public Works and Transportation on the Bus Act clarifies the limitations placed on the ICC with respect to interpreting this language.

At the present time, the New Jersey Department of Transportation has authorized over 30 carriers—these are nonsubsidized carriers—who are certified to provide regular route, intrastate service from various points in New Jersey to the Atlantic City area. These carriers operate over 80 authorized routes. However, of the anticipated number of buses that will travel to Atlantic City in 1983, most will come from out of State, and we are very happy to see that. Consequently, they will come under the jurisdiction of the ICC. Our fear is that if the Commission does not enforce the preemptive language contained in the act, that these companies will receive authority to service areas along the route in New Jersey or, in some cases, to develop routes that are wholly within New Jersey, but have an interstate destination. And I would just like to point out one that is in the formal testimony.

We have had a recent submission for a carrier to operate between New York City and Atlantic City, heading north before heading south. The only reason that he would head north into New Jersey is to pick up from some additional communities within New Jersey. But having achieved the ICC rights to operate on that route, he would now have the authority to run that interstate service, based on his interstate certificate. We in New Jersey realize we have to watch very closely the developments in these corridors, because they are different from those throughout the country. We are doing that, and we are working with the private bus industry to specifically address those questions.

We feel that perhaps one of two options exist that might give us a more complete understanding as to how things are operating and a better handle on insuring the public health and safety of those bus operations. These two options appear to be a joint board concept which is now provided in the ICC regulations and which we feel would provide sufficient grounds for the State of New Jersey, working with either the State of New York or the Commonwealth of Pennsylvania, to provide the proper enforcement, or a transit district similar to that which the Washington area metropolitan transit district has, recognizing that the bus service in New Jersey to New York or to Philadelphia is largely oriented completely within New Jersey, with just that final destination.

Our immediate concern, however, Mr. Chairman, is that the ICC be directed to pay heed to congressional intent embodied in the Bus Act and requested to enforce the existing safeguard provisions.

Thank you, Mr. Chairman.

Mr. SUNIA. Thank you.

Mr. FLYNN. Thank you, Mr. Chairman and members of the committee.

I am appearing in conjunction with the Department of Transportation. I am the president of Lakeland Bus Lines, and a carrier involved directly in the case that was cited by Mr. Crawford, the Caravan Bus Lines application, which was filed 2 weeks after the act became effective. It is still pending before the Commission.

In addition to being the president of the company, I have been in practice—I am waiting for some attention, Mr. Chairman. I came down here to give you some information, and I had hoped that you would hear it.

Mr. SUNIA. Please proceed, Mr. Flynn.

Mr. FLYNN. I have also been engaged in practice before the Interstate Commerce Commission exclusively for 48 years, and I am familiar with practice before that Commission.

The proceeding involving the case of first impression, which is the *Caravan* case now before the Commission, has brought to light, among other activities of the Commission which have become public knowledge, that the Commission apparently no longer considers itself the agent of the Congress. While the act contains all the admonitions and declarations of policy by which that act shall be administered by the Commission, the Commission is paying no attention to that. The Commission is no longer your agent. The Commission is acting, rather, as the agent of the executive department of the Government. And I will submit that some attention be given by the Congress toward the administration of the act as enacted.

More specifically, it has changed completely the former burden of proof upon applicants in proceedings as to convenience and necessity by releasing them from that burden of proof and putting it upon protestants or upon the public. Now, that is fine, but at the same time it is denying the public and protestants an opportunity to present the public interest.

Since the case began, we have been insisting upon the Commission that the tradition always followed, particularly in the New York-New Jersey area, which is unique in the entire world—there is no area that affects the commuter traffic as it does in that area—and in that area always, there were joint board hearings where the States were permitted to participate, hold public hearings, and make their recommendation to the Commission, which could modify, change, reverse, or adopt the findings and recommendations of the joint boards. We have been asking that that be done.

We have so far been unable to get the Commission to afford the public the public hearing which it has traditionally given.

The case went so far as to be finally granted by the Commission, and we had to go to court. As soon as the Commission was notified that they were in court, they admitted by an order that due process had been not given, and gave us 10 days to reply to information that had been submitted by applicant. Ten days is obviously no time whatsoever to possibly address the problem, and beyond that, quite obvious to all of us is that a public hearing should be accorded. We move about 7,000 people per day. These people are constituents—Mr. Howard is not here—but I am going to advise you gentlemen—these people are important. Their lives depend upon getting to New York at a specific minute every day. And they are going to be awfully angry if we go under, and under we will go, if we are permitted to have competition pick and choose its traffic—no plan, no schedules promised; the Commission does not require anything but a simple insurance policy and a request by an applicant, "We want to do it." And all they want to do in our case is to run over every single route that we operated and developed over 32 years.

Now, oddly enough, I did not get into the bus business for money or anything. As a matter of fact, I supported it financially all my life. The company never paid a dividend. I maintained it through my income as a very capable practitioner before the Commission, and I did it for myself, for my neighbors and my friends in the Morris County area of New Jersey, where I live. Fortunately, it came from 5 buses to some 73 or 74 today.

I am 71. I am not here for anything except the public interest, because if we go down, and assuredly we will, the State of New Jersey will have one more bus company to operate with public subsidy—and that includes Federal and State.

I cannot believe what goes on sometimes in Washington. This year, we were given $4 million in new equipment through UMTA, the United Mass Transit Agency. That is a laudable effort, and that is only 23 buses out of a total of 700 that Congress helped to fund along with the Port of New York Authority and funds from the State of New Jersey. Now, they want more competition—what, to compete with the very things that you are trying to create yourself. I am not asking for any proposal of any applicant. What, if anything, they are going to do, whether they have any financial fitness or ability of any kind, is open this very highly and delicate competitive structure in the New Jersey-New York area to unbridled competition, which the applicant in this proceeding, it is a matter of record, says they cannot be operated by any agent in transportation with union labor. The concept and thrust of it is that we have to only be able to operate this territory with depressed labor conditions. And you are also—you put it into the act—admonitions to the Congress that they shall maintain fair labor conditions in the industry. They do not give a hoot about that. They do not care about maintaining and developing a proper transportation system. You put that in the act. They have got in the act, with respect to State legislative bodies controlling transportation, that the Commission shall cooperate with them. They never cooperate. They are against and anti. The chairman of the

Commission itself is advocating the sunsetting of the Commission, no regulation, and the other four members of the Commission, now appointed by the executive department, are of an equal mind.

Now, you have set up the act. You have got all the safeguards. You have put them into the act. But as an oversight committee, I say today, not next week, advise them please, by a simple letter, if that is all that is necessary, that you meant what you said when you wrote this act.

Thank you.

Mr. SUNIA. Thank you, Mr. Flynn.

Mr. Jamieson.

Mr. JAMIESON. Thank you.

I am appearing here today in place of Barnet Rukin. I am vice president of Hudson Transit Lines, Inc., more commonly known as Short Line, of Mahwah, N.J.

We are appearing for the New Jersey Motor Bus Association, Inc. Basically, our concerns are the same as those addressed by Mr. Crawford and Mr. Flynn. We have a grave concern over the Commission's attitude toward the grant of services in the State of New York and New Jersey that are competitive to commuter bus operators. We also have the same grave concerns that they have expressed in regard to the grants of operations that are special operations, or so-called nature of special operations, where they are running interstate to the casinos in Atlantic City; they are providing bonuses and cash prizes as an inducement to get them to come down there; they certainly are special operations, and the Commission is ignoring those sections of the act prohibiting grants of such authority.

We also have one other concern—I might point out, however, that in my prepared statement, I have cited numerous cases spelling out the particulars of the sections of the act that the Commission, we feel, is in violation of. There is one other concern, and that is the grant of intrastate authority on interstate routes which are in effect a subterfuge. Carriers are making applications from remote places such as Port Jervis, N.Y., a community that borders on the New York/New Jersey State line and has about 8,000 population. They run that route into the State of New Jersey, to Atlantic City, and ask to serve all intermediate points in interstate and intrastate commerce. It is obvious that the interstate traffic that would be generated on that route would be zero, if at all. There is no way that they could generate that capacity. It is an obvious attempt to get the intrastate authority, which I would assume would normally be denied by the New Jersey administering body, since it would compete with existing operators.

There have been other instances in the area where similar types of applications have been granted, and we feel that this is another part of the act that is being abused, and Congress should address this and take whatever corrective action is necessary.

I wish to thank you for this opportunity to appear before you.

Mr. SUNIA. Thank you very much, Mr. Jamieson.

Mr. Fitzsimmons, do you have a separate statement?

Mr. FITZSIMMONS. No. I have no prepared statement.

Mr. SUNIA. I have one question, and it is with regard to commuter service. Mr. Crawford, at page 5 of your testimony, you say that the ICC treated the State's protest in a cursory manner. Did the ICC give any attention to the commuter bus protection provisions set out in the act, or did it merely ignore them?

Mr. **Crawford**. In our opinion, Mr. Chairman, they ignored them completely. We were not provided any information. We were simply notified and expected to react in a very short timeframe and to provide all the arguments against, and yet we had no basis to provide that information because there was nothing provided by the applicant.

Mr. **Sunia**. Let me say at this point that at some future date soon, the Commission will be coming before the committee, and we certainly will convey your concerns to them, and more particularly, on the issue of commuter provision and also a special operations provision.

Mr. **Crawford**. I thank you very much, Mr. Chairman.

Mr. **Sunia**. Mr. Shuster.

Mr. **Shuster**. I have no questions, thank you, Mr. Chairman.

Mr. **Sunia**. Mr. Daub.

Mr. **Daub**. No questions, Mr. Chairman.

Mr. **Flynn**. Mr. Chairman, in connection with your remarks, which I thank you for, it seems to me to be the most modest request—and this is a densely populated area of the country—that the least that could be done is to afford the public a hearing in this matter, so that the facts can get on the table, and make a record, a complete record, so that then the Commission can properly adjudciate these matters. But now, it goes to a simple review board of three members, sitting here in Washington with 50-State jurisdiction. They do not have that ability, no matter how well they might be, to have that great knowledge over every segment of this United States. And all we ask for is a public hearing. Let the Commission decide it in conformance with the language of the act and the admonition as to policy by the Congress. But at least, let us do it openly and in a democratic way, and I think the Commission should be so told. Thank you.

Mr. **Sunia**. We will follow your advice, Mr. Flynn.

Mr. **Flynn**. They know me well. Unfortunately, the Commission, I think, was one of the greatest administrative agencies of our country, and it saddens me to see it today. Now, the present Commissioners would not know my name, but going back to the great Commissioners——

Mr. **Sunia**. They will now have occasion to find out.

[Subsequent to the hearing, the following was received from Mr. Crawford:]

NJDOT PROTESTS

Applicant	Proposed Service	ICC case number
Olympic Trails Bus Co	New York, N.Y.-Atlantic City	MC 130145 (Sub-4).
C.L.D. Transportation Co., Inc	New York, N.Y.-Atlantic City	MC 146472 (Sub-3).
Pocono Mountain Trails, Inc	Fort Jervis, N.Y.-Atlantic City	MC 154967 (Sub-1).
Cape Transit Corp	Ocean City, N.J.-Atlantic City	MC 161672 (Sub-3).
Fugasy Express, Inc	Points in New York & New Jersey-Atlantic City	MC 142630 (Sub-9).
Caravan Coach Lines, Inc	Northwestern, N.J.-New York, N.Y. (Interstate Commuter Route).	MC 136730 (Sub-15).

Mr. SUNIA. Well, gentlemen, thank you very much.

I think at this point, we will adjourn for lunch and we will reconvene, Mr. Shuster, about 1 o'clock—will that be all right?

Mr. SHUSTER. Yes.

Mr. SUNIA. One o'clock. then.

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 1 p.m. this same day.]

[The subcommittee reconvened at 1:20 p.m., Hon. Fofo I. F. Sunia presiding.]

Mr. SUNIA. The subcommittee will please, once again, come to order.

We will now proceed with receiving the testimony of the American Bus Association. Mr. Norman Sherlock is president and chief executive officer, and he is accompanied by Mr. Webb, Mr. Knappen, and Mr. Rhyne.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF
NORMAN R. SHERLOCK
PRESIDENT, AMERICAN BUS ASSOCIATION
Before the
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C.
October 26, 1983

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to present the views of the American Bus Association at the initial oversight hearings of your committee on bus regulatory reform.

Obviously, the Bus Act has not been in existence long enough to make definitive judgments about the full impact that it will have on the public and the industry. It is clear, however, that the regulatory reform legislation which this Committee worked on last year and the year before has yielded some significant benefits already, particularly in terms of the bus industry's ability to provide better service.

There is definitely a more intensely competitive environment in the bus business today and the public is reaping the benefits derived from a broader range of schedules and services, some of which are innovative and unique. Bus companies clearly will be able now to shake off the yoke of repressive

State regulation which previously prevented them from adjusting schedules in a timely fashion, charging reasonable intrastate passenger fares, and discontinuing uneconomic service.

Aside from these positive things, there are a number of existing or evolving problems which we would like the Committee to consider.

ENTRY

As shown by Appendix A to my statement, over 200 applications have been filed for authority to transport passengers over regular routes. Not a single application has been denied. The ICC's automatic grant policy reflects its apparent conviction that no application for authority to transport passengers can ever be inconsistent with the public interest. We can only conclude that the ICC has not conducted any meaningful examination of potential entrants even though the Congress clearly intended that this be done.

The Bus Act specifically prohibits the Commission from using a master certification procedure for the authorization of regular-route service.[1/] This Committee said in its report --

> It should be clearly understood, however, that the burden placed on protestants is not insurmountable. If the burden were so heavy as to result, for example, in the approval of all applications to transport passengers, it would be foolish to prohibit

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[1/] 49 U.S.C. 10922(c)(5).

> master certification . . . If entry for all fit applicants is virtually automatic, master licensing is clearly the most sensible method of certification.[2]

The ICC was then admonished as follows:

> There is no justification for subjecting applicants to the time and expense involved in processing applications for operating authority if approval is automatic. The Act does not create, and the Committee will not condone, a regulatory charade.

The ICC's disregard of Congressional intent is even more appalling when viewed against the background of the Bus Act. A major impetus for regulatory reform was the conviction of the bus industry and of the Congress that the ICC should not be permitted to deregulate the industry by administrative decree. The proceeding which caused the greatest concern was Ex Parte No. MC-133.[3] In that proceeding, the ICC considered a proposal to establish a master certification procedure under which any person could obtain regular-route authority merely upon proof of fitness. Action in Ex Parte No. MC-133 was deferred pending Congressional consideration of bus regulatory reform legislation. Although the Congress prohibited master certification, the ICC is achieving the same result by its automatic grant policy.

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[2] H. Rep. No. 97-334, 97th Cong., 1st Sess. (1981) 30.

[3] Entry Flexibility -- Regular Route Passenger Service, 44 Fed. Reg. 64845 (November 8, 1979).

Regulation of entry has become a regulatory charade or, in the words of Chairman Taylor, "a monumental sham of paper shuffling."[4] Entry regulation would not be a sham if Commissioners made a conscientious effort to apply the public interest criteria spelled out by the Congress in section 6 of the Bus Act[5] and if meaningful fitness standards were applied.

SAFETY FITNESS

To the best of my knowledge, the ICC has not denied a single application on grounds of safety unfitness. It is inconceivable that all of the 938 first-time applicants for charter and special operations authority could pass a rigorous safety check. Neither the ICC nor the DOT's Bureau of Motor Carrier Safety have investigated the safety fitness of more than a handful of applicants. Both agencies plead lack of funds and personnel but we see no reason why they cannot make a genuine, concerted effort during the application process using the resources they have.

Safety, after all, is and should be of critical concern to everyone. The private bus industry, which we represent, has always given safety the highest priority and there is no reason why new entrants into the business should be allowed to deviate from safety standards through administrative default.

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[4] Testimony before the Senate Committee on Commerce, Science, and Transportation, Oversight Hearings on the Motor Carrier Act of 1980, September 21, 1983.

[5] 49 U.S.C. 10922(c)(3).

The overriding premise should be that all buses should be safe if they are allowed to use the nation's streets and highways, no matter who owns or operates them.

Meaningful insurance standards for all operators of buses could be a significant factor in enhancing bus safety.

CRITICAL PENDING ISSUES

Whether the new legislation proves to be even moderately successful will depend on how five critical pending issues are resolved.

1. Applications of Subsidized Transport Systems for Charter and Special Operations Authority

Recognizing that competition between subsidized and unsubsidized charter bus operators should not be encouraged, the Congress made the charter and special applications of public transit authorities subject to the public interest entry standard. Carriers which do not receive governmental financial assistance for the purchase or operation of buses may obtain charter and special operations authority merely upon proof of fitness.

Five applications to transport passengers in charter and special operations have been filed by recipients of substantial governmental financial assistance. Two applicants seek authority between all points in the United States;[6] one seeks broad radial authority to all points in the United States;[7]

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[6] MC-169015 -- Canadian National Railway Co.; and MC-169358 -- Cambria County (Pa.) Transit Authority.

[7] MC-164973 -- Manchester (N.H.) Transit Authority.

and the other two seek less extensive authority.[8/]

Four of the applications were published in the fitness-only category even though the applicants had indicated that they were recipients of substantial governmental financial assistance.

The ICC's rules require that the nature and extent of governmental financial assistance be disclosed by the applicants but none of the subsidized mass transit systems has made the required disclosure. The ICC's rules require a description of the service proposed. None of the subsidized applicants has explained how it would originate charters and tours hundreds or thousands of miles from its base territory or why it wants to do so.

We believe it would be contrary to public interest and the national transportation policy to permit publicly subsidized mass transportation entities to depart from their established mission of providing commuter service and to expand their charter capability beyond their urban base of operations. There is no reason for these entities to be seeking nationwide charter and tour authority when that service can be provided by privately-owned carriers and at no cost to taxpayers.

[8/] MC-168258 -- Panhandle Area Transit, Inc. d.b.a. P.A.T.; and MC-168774 -- Audubon Area Community Services, Inc.

We agree, and we hope the ICC will agree, with the following conclusion of Chairman Howard:

> The Bus Regulatory Reform Act is not intended to provide a loophole whereby publicly subsidized mass transit authorities could obtain nationwide tour and charter authority.[9]

2. One-Carrier Dominance of the Bus Industry

The bus industry is unique in having one carrier that is so huge and dominant. Many smaller carriers are deeply concerned that the giant of the industry, Greyhound, will be able to exploit deregulation and use its immense resources to destroy them. Clearly, a central premise of regulation is to increase competition, not to eliminate it. Many smaller carriers believe that is what will happen unless proper attention is paid to the problem. These people believe that size is not only relevant but critical in looking at the effects of the entry policy of the Commission and in determining where the public interest lies.

Greyhound, in four pending applications for regular-route authority,[10] has blanketed key routes of two small regional carriers, Peter Pan Bus Lines, Inc. and Bonanza Bus Lines; several independently owned and operated members of the National Trailways Bus System; and Trailways, Inc. itself. If these applications are approved, one can predict with confidence that no regular-route application will ever be denied.

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[9] Cong. Rec., October 7, 1983, p. E 4896-7.

[10] No. MC-1515 (Sub-Nos. 324-327).

An ICC Administrative Law Judge has recommended approval of Greyhound's four applications but has also recommended that the ICC investigate Greyhound's overwhelming dominance of the intercity bus industry and determine whether such dominance was attained by unlawful means. The Administrative Law Judge noted that: "A finding that Greyhound willfully engages in such [an unreasonable transportation] practice for the purpose of increasing its domination of nationally scheduled bus service may result in suspension of its authority."

Obviously, it would be inconsistent to approve the Greyhound applications without first resolving the issue of its dominance of the industry. Clearly, the investigation should be conducted and concluded before substantial additional authority is granted.

3. U.S. - Canadian Reciprocity

We know, of course, that the President has lifted the moratorium on grants of operating authority to Canadian bus and truck operators. It would be contrary to the public interest, however, to authorize a Canadian carrier to transport passengers in the United States if United States carriers, but not Canadian carriers, are barred from obtaining comparable operating authority in Canada. That issue is presented in the pending application of the Canadian National Railway to transport passengers in charter and special operations between points in the United States. Our carriers are not permitted to originate or terminate charter trips in the Province of Quebec but Canadian carriers are not similarly restricted.[11/] The same is true of other Canadian Provinces. We frequently receive complaints that U.S. carriers cannot operate in Canada with the same freedom and rights enjoyed by Canadian carriers.

Canadian carriers have been authorized to pick up charter and tour groups at points in the United States, transport them to other points in the United States, and return the groups to the United States point of origin. Our carriers tell us they are not permitted to provide similar service in Canada but that Canadian carriers are not similarly restricted. We seek equality of treatment and do not believe that ICC entry policy should foster inequality.

4. Minimum Required Levels of Insurance

Section 18(b) of the Bus Act provides that the minimum levels of financial responsibility established by the Secretary of Transportation shall be --

(1) Not less than $5,000,000 for any vehicle with a seating capacity of 16 passengers or more; and

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[11/] See the legal opinion of the firm of Campbell, Pepper, Laffoley of Montreal, attached as Exhibit A to the protest of Vermont Transit Co., Inc., in No. MC-169015, Application of Canadian National Railway Co. d/b/a Roadcruiser Service. A copy of that opinion is attached as Appendix D to this statement.

(2) Not less than $1,500,000 for any vehicle with a seating capacity of 15 passengers or less.

These minimum levels of insurance will become effective on November 19, 1983, unless a lower level is prescribed by the Secretary of Transportation. The statutory minima may be reduced from $5,000,000 to $2,500,000 and from $1,500,000 to $750,000 --

> if the Secretary finds that such reduction will not adversely affect public safety *and* will prevent a serious disruption in transportation service. (Emphasis supplied).

No support exists for either finding.

We do not advocate the higher minimum level to discourage entry but to assure the public that travel by bus is adequately insured. Adequate insurance also has a direct bearing on safety.

With respect to entry, the difference between a $2,500,000 minimum and a $5,000,000 minimum is negligible. An example supplied by the Department of Transportation shows that the annual premium cost of $1,800 per bus per year for $3,000,000 worth of liability insurance would be increased by only $42.16 per month if the required level were $5,000,000.[12] Our insurance people indicate that after the first million dollars of coverage, the cost of each additional million dollars of coverage up to $5,000,000 would be only $300 per million for an operator of 20 buses or less depending to some extent, of course, on his or her experience. For operators of 21 to 40, 41 to 60, and 61 to 80 buses, the additional cost would be only $600 per million, $700 per million, and $800 per million, respectively.

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[12] *Minimum Levels of Financial Responsibility for Motor Carriers of Passengers, U.S. Department of Transportation* (January 10, 1983) 18.

The DOT's Notice of Proposed Rulemaking points out that the intercity bus industry has a better safety record than the trucking industry and concludes that the accident cost data "indicates that the 2-year phase-in period may be advisable." The accident data upon which the tentative conclusion is based does not reflect the experience of a significantly different bus population. Hundreds of new carriers with no previous experience in intercity bus operations have recently entered the field. Only a handful of these carriers have been audited for safety compliance by the Bureau of Motor Carrier Safety. The Secretary of Transportation should be reminded about the commuter bus accident at Triangle, Virginia, on I-95 on February 18, 1981. That accident resulted in 11 deaths, 13 persons seriously injured, and liability claims of between $14,000,000 and $15,000,000. The carrier was insured for only $300,000.

5. Retention of Antitrust Immunity for Collective Ratemaking

Section 10 of the Bus Act revised the standards for approval of a rate bureau agreement; established rules governing the functioning of a rate bureau; and curtailed the permissible scope of collective ratemaking. Rules governing the operations of the National Bus Traffic Association are now in place and the carriers are in compliance.[13]

In the future, carriers may not discuss or vote upon single-line or joint-line rates with antitrust immunity except in connection with a general rate increase or decrease, broad change in tariff structure, promotional or innovate fare changes, and rules and regulations of general applicability. NBTA has submitted to the ICC for its approval an amended rate agreement which reflects the narrower scope of collective ratemaking mandated by the Congress.

The bus industry felt it was especially important, and the Congress agreed, to permit carriers to agree on fares for travel during a specified period to all points on the lines of all carriers. The industry, pursuant to the immunity which exists for collective consideration of broad changes in tariff structure, has launched a tariff simplification program. By establishing a mileage scale of fares, it will be possible to substitute a single page of applicable fares for the point-to-point fares now published in three feet of tariffs. Such an effort can only be brought to fruition by continuation of antitrust immunity for collective ratemaking.

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[13] The regulations adopted by the Commission in Ex Parte No. 297 (Sub-No. 6), Bus Rate Bureau Procedures, 367 I.C.C. 313 (1983) are codified at 49 CFR 1331.5.

Many small carriers believe that, absent antitrust immunity, Greyhound will refuse to enter into rates for joint-line service which are competitive with its own single-line rates. The antitrust laws might be cited as a justification for such a refusal. Closure of the Greyhound network to the joint-line service of other carriers would enhance Greyhound's already dominant position.

Perhaps the most shocking development in the first year of bus regulatory reform has been the ICC's bold assertion that it can withdraw antitrust immunity for all motor carrier rate activity by administrative edict.[14/] Repeal of the collective ratemaking provisions of the Bus Act by administrative action would be a usurpation of legislative authority which the Congress should not countenance. Although Section 10 of the Bus Act curtails the permissible scope of collective ratemaking, it also reduced the Commisson's discretion in regulating rate bureaus. Section 10 of the Bus Act incorporates the standards of section 14 of the Motor Carrier Act of 1980, which unequivocally approved rate bureaus which comply with the statute's procedural requirements.[15/] As noted in the report of this Committee on the Motor Carrier Act of 1980 --

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[14/] In Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments, 48 Fed. Reg. 46399 (October 12, 1983), the ICC announced that total withdrawal of antitrust immunity will also be considered. Comments on that phase of the proceeding are due December 12, 1983.

[15/] Pub. L. 96-296, 94 Stat. 793, 49 U.S.C. 10706(b)(2).

> It is important to observe that this legislation does not propose to eliminate rate bureaus.[16]
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>
> When the parties to an agreement meet all the conditions in the section, there is a presumption that the Commission should find the agreement to be in the public interest. (Emphasis supplied).[17]

At a hearing before the Motor Carrier Ratemaking Study Commission on June 16, 1983, Chairman Taylor was asked whether the Commission would terminate antitrust immunity if the Study Commission so recommended. The ICC Chairman replied: "Absolutely, without question."[18] Changing the scope of or terminating antitrust immunity for collective ratemaking is a prerogative reserved to the Congress. If there is any doubt about the ICC's lack of authority, this Committee should initiate appropriate remedial action.

INTRASTATE BUS RATES

One of the most important benefits derived from the Bus Act has been the ability of carriers to increase depressed intrastate bus rates. So far, the ICC has granted the carriers' requests in 15 of the 17 cases appealed from State commissions. The cases are listed in Appendix B to my statement. Even after applying the increases approved in these cases, the intrastate rates remain substantially below the comparable interstate rates. Clearly, the carriers have exercised restraint in raising fares.

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[16] H. Rep. No. 96-1069, 96th Cong., 2d Sess. (1980) 28.

[17] *Id.* at 29.

[18] Hearing Transcript 136.

The ICC has developed a sound set of rules which has enabled it to dispose of intrastate rate cases within the 60-day period allotted by the Congress. Also, the ICC has applied standards that are clear and rational. In the typical case, the ICC has ascertained the extent to which intrastate rates are below comparable interstate levels. It then examines the evidence to determine whether there is any jsutification for the rate disparity. Finally, the ICC evaluates any cost data of record to determine whether the intrastate rates impose an actual burden on interstate commerce.

Passengers will also benefit from the rate preemption provisions of the Bus Act. As noted in the report of your Committee, discriminatory State rate regulation had compelled interstate passengers to subsidize intrastate passengers, the net effect of which was to discourage entry into the regular route market.[19/] Elimination of the cross-subsidy should improve both interstate and intrastate service.

[19/] H. Rep. No. 97-334, 97th Cong., 1st Sess. (1981) 26,44.

DISCONTINUANCE OF INTRASTATE SERVICE

The exit provisions of the new law, coupled with the rate and schedule preemption provisions, may enable bus carriers to escape the financial disaster experienced by carriers of other modes. After referring to "the near impossibility for carriers to discontinue strictly intrastate routes," this Committee concluded in its report on the bill which became the Bus Act:

> The public interest, as distinguished from the parochial interest of a small number of passengers, is not served by requiring carriers to continue hopelessly unprofitable regular route service. In effect, the carriers are subsidizing the communities involved out of earnings that would otherwise be used to improve viable operations.[20]

ABA members have been cautious in seeking State and ICC permission to discontinue service. As indicated in Appendix C to my statement, the ICC has decided only 12 discontinuance cases. In this area, as in the rate preemption area, the ICC has enunciated decisional standards that are clear and equitable. In essence, the ICC balances the need for the service proposed to be discontinued against the burden of continued operation. In each case, the revenues and costs associated with operations over the route must be ascertained, together with whether there is a realistic prospect of subsidy.

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[20] H. Rep. No. 97-334, 97th Cong., 1st Sess. (1981) 25.

Members of ABA realize that discontinuance of bus service at a community having no other form of public transportation is a grave step. Some adjustments in service may create hardship but the fact remains that the Bus Act has generated much more new bus service than the amount of service discontinued.

INTERSTATE RATE REGULATION

Regulation of interstate passenger fares and express rates was relaxed by section 9 of the Bus Act which established a revised rule of ratemaking and by section 11 which established a progressively expanding zone of rate freedom. The ICC's implementing regulations are in general accord with Congressional intent.

UNIFORM STATE REGULATION

Section 19 of the Motor Carrier Act of 1980 recognized the pressing need for greater uniformity of State regulation. As directed by section 19, the Secretary of Transportation and the ICC have investigated the problem and have submitted their recommendations to the Congress. The DOT and the ICC produced a good report. Action to implement it should be undertaken as quickly as possible.

Our objective is to achieve a degree of uniformity in regulation which will enable buses to move from State to State as freely as the private automobile. Few actions would be of greater benefit to the traveling public than the elimination of unnecessary trip permits, duplicative filing and reporting requirements, and the vast array of duplicative State requirements on licensing, vehicle inspection, and payment of fuel taxes.

Greater uniformity of regulation as between the States and the Federal government would reduce for both carriers and government agencies the costs involved in processing intrastate rate requests and applications to discontinue service.

CONCLUSION

The Bus Regulatory Reform Act of 1982 was the product of a carefully crafted compromise. None of the participants in the legislative process was completely satisfied. In most respects, the ICC has executed the will of the Congress, but in disregarding the public interest standard of entry, in failing to enforce fitness standards, and in threatening to abolish antitrust immunity, the ICC has subverted the rule of law.

Many crucial issues remain to be decided by the ICC. We urge the Committee to pay careful attention to these issues to see that Congressional intent is respected. The resolution of these issues -- subsidized transit authority charter/special applications, one-carrier dominance, discriminatory international practices, minimum required levels of insurance, and retention of antitrust immunity for collective ratemaking -- will have a tremendous impact on shaping the future competitive posture of the intercity bus industry.

APPENDIX A
Page 1 of 2

OPERATING RIGHTS APPLICATIONS FILED UNDER THE BUS REGULATORY REFORM ACT OF 1982 (through October 14, 1983)

This table covers notices of applications filed on or about November 19, 1982, the effective date of the Bus Act. These notices did not begin to appear in the Federal Register until December 13, 1982.

I. Total Number of Operating Rights Applications Filed			
A. Charter and Special			1,689
(1) By first time applicants	938		
(2) By certificated carriers	751	1,689	
(3) Public interest Applications	16		
(4) Fitness-only Applications*	1,673	1,689	
B. Total Regular-Route Applications			213
(1) Applications for General Inter-city Service	107		
(2) Local and Short-Haul Applications	68		
(3) Applications for Specialized Service**	38	213	

---

* ABA contends that 5 applications were erroneously classified as fitness-only.

**Airport ground transportation and service to sites of gambling casinos.

APPENDIX A
Page 2 of 2

C. Regular-Route Applications by Statutory Classification			
(1) Applications for Interstate and Intrastate Authority	113		
(2) " " " Authority Only	62		
(3) " " Intrastate " "	27		
(4) Fitness-Only Applications *	11	213	
D. Restriction Removal Applications			19
E. Contract Carrier Applications			10
(1) Applications to Serve Commuters	3		
(2) Applications to Serve Train Crews, Casinos, Brokers, Schools, etc.	7	10	
F. Temporary Authority Applications			133
(1) Regular-Route	37		
(2) Charter and Special	89		
(3) Contract	7	133	
G. Finance Applications			11
H. Transfer Applications			25
(1) Regular-route	6		
(2) Charter and Special	19	25	
GRAND TOTAL			2,100

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* 9 of these applications sought authority to serve a community not regularly served by an authorized carrier.

APPENDIX D
Page 1 of 2

INTRASTATE RATECASES APPEALED TO ICC

Docket No.	Carrier	State Commission	Percent Increase Requested on Appeal	Decision Served	ICC Action
NC-C-10842	Carolina Coach Co.	North Carolina	Passenger-- 6.79 Express -- 17.79 Charter -- 1.52	1/14/83	Granted
MC-C-10844	Jefferson Lines, Inc.	Missouri	Passenger -- 23.1 Express -- 8.65	4/25/83	Granted
MC-C-10848	Peter Pan Bus Lines,Inc.	Massachusetts		5/6/83	Petition dismissed for lack of jurisdiction.
MC-C-10852	Peoria-Rpckford Bus Co.	Illinois	Passenger -- 20	5/24/83	Granted
MC-C-10851	Greyhound Lines, Inc.	Missouri	Passenger -- 25	5/20/83	* Petition dismissed for lack of jurisdiction
MC-C-10853	Greyhound Lines, Inc.	Massachusetts	Passenger -- 20	6/1/83	Granted
MC-C-10855	Greyhound Lines, Inc.	Georgia	Passenger -- 20 Express -- 11/14	7/5/83	Granted
MC-C-10856	Trailways, Inc.	Missouri	Passenger -- 19.15 Express -- 19.4 Charter -- 9.1	7/22/83	Granted
MC-C-10857	Jefferson Lines, Inc.	Missouri	Passenger -- 4.35	8/1/83	Granted
MC-C-10858	Trailways, Inc.	Arkansas	Passenger -- 25 Express -- 52.9	8/5/83	Granted
MC-C-10853	Greyhound Lines, Inc.	Oregon	Passenger -- 18	8/29/83	Granted
MC-C-10862	Trailways, Inc.	Tennessee	Passenger -- 15 Express -- 14.6	8/31/83	Granted

---

* Greyhound has appealed this decision to the United States Court of Appeals for the Ninth Circuit (No. 83-7704).

APPENDIX B
Page 2 of 2

Docket No.	Carrier	State Commission	Percent Increase Requested on Appeal	Decision Served	ICC Action
MC-C-10866	Greyhound Lines, Inc.	California	Passenger -- 5.25	9/13/83	Granted
MC-C-10869	Greyhound Lines, Inc.	Louisiana	Passenger -- 28 Multi-ride -- 35	9/28/83	* Granted
MC-C-10871	Greyhound Lines, Inc.	Washington	Passenger -- 20	10/7/83	Granted
MC-C-10870	Trailways, Inc.	Louisiana	Passenger -- 17.9 Express -- 60	10/7/83	* Granted
MC-C-10872	Greyhound Lines, Inc.	Arkansas	Passenger -- 25 Express -- 45	10/7/83	* Granted

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* State failed to reply to petition to ICC.

APPENDIX C

EXIT CASES APPEALED TO ICC

Docket No.	Carrier	State Commission	Routes Involved in Exit Petition	Decision Served	ICC Action
MC-1515 (Sub-331)	Greyhound Lines, Inc.	Georgia	Various routes	7/27/83	** Denied
MC-1515 (Sub-332)	Greyhound Lines, Inc.	West Virginia	Six (6) routes	8/25/83	Granted
MC-2890 (Sub-63)	Trailways (American Buslines, Inc.)	Nebraska	(1) Grand Island-Sidney	9/13/83	Granted
MC-1515 (Sub-334)	Greyhound Lines, Inc.	Kansas	(1) Ellsworth-Wilson	9/13/83	Granted
MC-59238 (Sub-74)	Trailways (Virginia Stage Lines, Inc.)	West Virginia	(1) Huntington-Welch (2) Logan-Charleston	9/13/83	Denied
MC-1515 (Sub-335)	Greyhound Lines, Inc.	Oregon	Eight (8) routes	9/15/83	Granted
MC-1515 (Sub-337)	Greyhound Lines, Inc.	Nebraska	(1) Omaha-Lincoln	9/16/83	* Granted
MC-1515 (Sub-336)	Greyhound Lines, Inc.	Oklahoma	Three (3) routes	9/16/83	Granted
MC-109780 (Sub-84)	Trailways, Inc.	Oklahoma	(1) Tahlequah-Westville	9/19/83	* Granted
MC-55312 (Sub-22)	Trailways (Tennessee Lines, Inc.)	Tennessee	(1) Murfreesboro-McMinnville	9/26/83	Granted
MC-1515 (Sub-338)	Greyhound Lines, Inc.	Louisiana	Ten (10) routes	10/5/83	Granted
MC-109780 (Sub-83)	Trailways, Inc.	Kansas	Bucklin-Liberal Hutchison-Olothe Fort Scott-El Dorado Janction City-El Dorado	9/29/83	Granted

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* No objections filed to petition to the ICC

** Denied on procedural grounds

APPENDIX D
Page 1 of 3

LEX 055-62682
ELECOP (514) 875-5465

TELEPHONE (514) 875-5454
CABLE "BRAGAR" MONTREAL

CAMPBELL, PEPPER, LAFFOLEY
AVOCATS
BARRISTERS AND SOLICITORS

1 PLACE VILLE MARIE, SUITE 1414
MONTRÉAL, CANADA H3B 2B3

UROPE
107-115 LONG ACRE
LONDON WC2E 9PT
TELEPHONE 01-240-0736
TELEX 28756

August 18, 1983

Our File: 111-007

Vermont Transit Co., Inc.
Burlington, Vermont 05401
U.S.A.

Attention: Robert H. Steele, Jr., Esq.

Re: Quebec Operating Authority

Dear Sirs:

The present letter is pursuant to your letter of April 1, 1983 in which you requested our views concerning the possibility of your company obtaining the necessary operating authority in the Province of Quebec to transport a group of passengers from the Burlington, Vermont, Airport to Montreal, under present U.S. operating authority, for an airline, and bring a different group back to Burlington for the same or for a different airline, under the proposed Quebec operating authority.

We wish to confirm our verbal opinion to you of July 29, 1983 to the effect that under present circumstances no such operating authority in this jurisdiction would be granted. This opinion is based on the following considerations:

In the Province of Quebec the operating authority of carriers is governed by The Transport Act, L.R.Q. Ch. T-12, and its Regulations.

Under section 36 of the Act, no person may act as a carrier or provide the services of a means of transport or transport system unless he holds the permit prescribed by Regulation for that purpose.

.... /2

Article 3 of the Regulation respecting special and chartered trips by bus provides:

> " In order to make a special or chartered trip, a person must hold a public transport or airport transportation permit, within the meaning of the Regulation respecting public transport, and, as circumstances warrant, a permit issued under section 19.
>
> No permit is required for a person bound by a school busing contract who meets the conditions set out in section 11, or for a person who makes a chartered trip whose place of departure and final destination are situated outside Quebec and who has authorization in the state or province in which the bus used is registered. "

In our opinion, this Regulation sets forth the principle that a public transport or airport transportation permit is required for the person who makes a special or chartered trip. An exception to the principle is that no permit whatsoever is required for a chartered trip whose place of departure and final destination are situated outside Quebec.

In the same Regulation the terms "special trip" and "chartered trip" are defined as:

> Special trip: A trip by bus that is not part of a carrier's regular service, at a fixed rate per passenger.
>
> Chartered trip: A one-way or return trip by bus for the exclusive transportation of a group on a set date and at a fixed rate for the trip.

At the present time your company does not hold a public transport or airport transportation permit. Consequently, without such permits it may only make chartered trips whose place of departure and final destination are situated outside Quebec. Accordingly, if your company wishes to make either special or chartered trips originating in Quebec, it is our opinion that it must qualify to obtain either one of the permits stated above.

.... /3

In order to obtain an airport transportation permit, your company must meet the conditions set forth in Art. 13 of the Regulation respecting public transport, which requires a corporation to be incorporated in Canada with its head office located in Quebec. Based upon the information which you have furnished to us, your company does not meet these conditions.

In order to obtain a public transport permit, sections 4 and 6 of the Regulation respecting public transport stipulate:

> (4) "No person may provide a public transport service unless he is the holder of a permit for such purpose and such permit is in force."
>
> (6) "No person may obtain a new public transport permit except for the purpose of serving a territory formerly served under another permit; the Commission may however change the terms of a permit already issued or authorize the transfer of such permit."

It is our view that by reason of this Regulation no new public transport permit will issue unless it is with respect to a territory formerly served by another public transport permit. In this instance, where you do not presently hold a public transport permit, section 6 above precludes you from obtaining a new one.

For your information, we enclose photocopies of the articles and sections cited above.

You have advised us verbally that by reason of deregulation in the United States, a carrier from this jurisdiction is not subject to similar constraints with regard to obtaining an operating authority equivalent to that which you seek to obtain here. We understand from you that it is your intention to take up with the authorities in your jurisdiction the question of this imbalance. In this context, you have requested us to take up this same question on an informal basis with the Commission des Transports du Québec and to report to you in this connection. We shall keep you informed.

Yours very truly,

Campbell, Tepper, Leff-ley

JRL/kt

Encl.

Gouvernement du Québec

O.C. 1264-83, 15 june 1983

Transport Act
(R.S.Q., c. T-12)

Special and chartered trips by bus

CONCERNING the Regulation respecting special and chartered trips by bus.

WHEREAS the General Order respecting special or chartered trips (R.R.Q., 1981, c. T-12, r. 25) has been kept in force and may be replaced by regulation of the Government under section 89 of the Transport Act (R.S.Q., c. T-12);

WHEREAS, under subparagraph *c* of section 5 of the Act, the Government may, by regulation, determine what activities require a permit, provide exceptions thereto as regards kinds of carriers, kinds of services, the means of transport or transport systems used and the territory or distance covered, and prescribe conditions for the carrying on of such activities;

WHEREAS, under subparagraph *i* of section 5 of the Act, the Government may, by regulation, prescribe, in respect of any activity, service or territorial division, that rates and tariffs are governed by a procedure of filing with the Commission des transports du Québec;

WHEREAS, in its white paper on the reform of school transportation in Québec, the Government has announced its intention to authorize school carriers to make chartered trips over short distances, without a permit;

WHEREAS it is expedient to liberalize the regulations respecting chartered trips to ensure a greater availability of services;

WHEREAS it is expedient to replace the General Order respecting special or chartered trips by a regulation;

IT IS ORDERED, therefore, upon the recommendation of the Minister of Transport:

THAT the « Regulation respecting special and chartered trips by bus », attached to this Order in Council, be made.

LOUIS BERNARD,
Clerk of the Conseil exécutif

Regulation respecting special and chartered trips by bus

Transport Act
(R.S.Q., c. T-12, ss. 5 and 89)

DIVISION I
INTERPRETATION AND APPLICATION

1. In this Regulation, unless the context indicates otherwise, the following terms mean:

"locality": the territory of a municipality and, where that municipality is included in a group constituted in Schedule 1, the territory of any municipality referred to in that group;

"route": the route a carrier must take under its permit;

"point of departure": the locality where the first passenger boards a bus;

"point of service": a locality designated by the Commission des Transports du Québec under section 5;

"local service": a service on a route where passengers may board and disembark at various points between localities;

"urban service": a public transport service operated within the boundaries of a locality;

"carrier": the holder of a public transport or airport transportation permit, within the meaning of the Regulation respecting public transport (R.R.Q., 1981, c. T-12, r. 21), issued for the transportation of persons by bus;

"chartered trip": a one-way or return trip by bus for the exclusive transportation of a group, on a set date and at a fixed rate for the trip;

"special trip": a trip by bus that is not part of the carrier's regular service, at a fixed rate per passenger.

2. For the purposes of this Regulation, buses are classified in the following manner into 6 categories, in descending order:

Category 1: a bus built for long-distance public transportation and equipped as follows: a baggage compartment, an interior baggage rack, seats with adjustable backs, an air-conditioning system and a toilet;

Category 2: a bus built for long-distance public transportation in which at least one equipment component listed in Category 1 is missing;

Category 3: a bus built for public urban transportation;

Category 4: a bus built on a truck chassis and equipped as follows: seats with adjustable backs, an airconditioning system and a toilet;

Category 5: a bus built on a truck chassis in which at least one equipment component listed in Category 4 is missing;

Category 6: a minibus or a bus of reduced size built for the transportation of no more than 15 persons.

3. In order to make a special or chartered trip, a person must hold a public transport or airport transportation permit, within the meaning of the Regulation respecting public transport, and, as circumstances warrant, a permit issued under section 19.

No permit is required for a person bound by a school busing contract who meets the conditions set out in section 11, or for a person who makes a chartered trip whose place of departure and final destination are situated outside Québec and who has authorization in the state or province in which the bus used is registered.

DIVISION 2
CHARTERED TRIP

4. A carrier may make a chartered trip:

(1) from a locality its permit authorizes it to serve, to any destination;

(2) from a locality that is not served by another carrier, to any destination;

(3) Effective 1 January 1984, from a locality that is served by another carrier but that is not a point of service, to any destination

The first paragraph does not apply to a carrier that on 29 June 1983 is not authorized under its permit to make chartered trips.

5. A carrier governed by section 4 may only designate as points of service the localities it is authorized to serve under its permit. It shall send a notice of designation to the Commission during the month of September.

Any change in designation by the carrier must, to be valid, be made in the same manner, during the same period.

A person who becomes entitled to make chartered trips during the course of a year may, within 30 days following such entitlement, forward a notice of designation or of change in designation to the Commission.

6. The Commission shall keep a record of the points of service designated by the carriers and shall publish a list of these points in its bulletin, as well as any new designation or any valid change made during the year.

Every designation has effect 30 days following such publication.

7. A carrier may also make chartered trips from or to Mirabel Airport provided the trips originate from a locality it is authorized to serve or terminate at such a locality.

This section applies even if Mirabel is a point of service.

8. A carrier shall provide a bus of the category applied for or of a higher category at the same price.

If a carrier is unable to fulfill its obligation, it must notify the applicant in writing that he may approach any other carrier authorized to make chartered trips.

9. Where the point of departure of a chartered trip is a locality that the carrier is authorized to serve in accordance with subparagraph 1 of section 4, at least 75 % of the passengers must board the bus at the localities served by that carrier.

Where the point of departure of a chartered trip is another locality, at least 75 % of the passengers must board the bus at the point of departure of the trip.

10. Where a bus is no longer serviceable, the carrier may request the services of any other carrier to terminate the trip. If the bus provided is of a higher category, the price of the trip may not be changed. If the bus provided is of a lower category, the carrier must reduce the price of the trip in proportion to the distance that remains to be covered.

11. In order to benefit from the exemption of the permit prescribed in section 2, a person bound by a school busing contract must meet the following conditions:

(1) the contract must have been granted to him by a regional board or a school board, a private educational institution or a general and vocational college;

(2) the point of departure of the trips must be situated in one of the following territories:

(a) the territory of the regional board or school board with which that person is bound by a school busing contract;

(b) the territory of the regional board or school board in which the private educational institution or the general and vocational college with which that person is bound by a school busing contract is situated;

(3) the total distance must not exceed 100 kilometres in the case of a one-way trip or 200 kilometres in the case of a return trip; and,

(4) the trip must be made by means of a bus used for the transportation of schoolchildren within the meaning of paragraphs 1, 2 and 3 of section 3 of the Regulation respecting motor vehicles used for the transportation of schoochildren, made by Order in Council 957-83 dated 11 May 1983, or by means of a school vehicle of the minibus type within the meaning of section 4 of the said Regulation.

12. For the purposes of section 11, a person whose school busing contract terminates during the months of May, June, July or August shall benefit from the exemption of permit up to 1 September.

13. Any carrier or any person governed by section 11 making a chartered trip shall, beforehand, enter into a contract with the applicant that contains the following information:

(1) its name and address;

(2) the name and address of the applicant;

(3) the category of the bus;

(4) the date of the trip;

(5) the point of departure and the destination of the trip;

(6) the number of passengers expected to board at each locality,

(7) the number of kilometres to be covered; and,

(8) the price of the trip.

That person shall keep a copy of the contract for a period of 2 years.

14. the driver of the bus must have a copy of the contract in his possession during the trip.

DIVISION 3
SPECIAL TRIPS

15. A carrier may make a special trip in the following cases:

(1) on one of its routes in order to comply with a special request to serve customers;

(2) from a locality it serves by a local service or by an urban service, to any destination, provided the point of departure and the destination of the trip are not directly connected by the regular service of another carrier.

16. Except in the case mentioned in paragraph 1 of section 15, special trips must not include stops except to allow the passengers to rest.

17. A carrier making a special trip must, beforehand, prepare a report that contains the following information:

(1) its name and address;

(2) the category of the bus;

(3) the date and time of departure;

(4) the point of departure and the destination of the trip;

(5) the price per passenger; and,

(6) the reason for or purpose of the trip.

Where a special trip has been completed by a carrier, the latter shall enter in the report the number of passengers carried, the number of kilometres covered and the date and time of return. The carrier shall keep the report for 2 years.

18. A bus driver must have a copy of the report in his possession during the trip.

DIVISION 4
TRAVEL PERMIT

19. In order to make a chartered or special trip that is not prescribed in sections 4, 7 and 15, a carrier must obtain a permit.

The permit must contain the following indications:

(1) the point of departure and the destination of the trip;

(2) the date and time of departure and return;

(3) the number of passengers carried in the case of a chartered trip;

(4) the name and address of the applicant in the case of a chartered trip;

(5) the category of the bus;

(6) the number of kilometres to be covered;

(7) the price of the trip or the price per passenger, as appropriate, and,

(8) the name of any carrier on whose route the trip must be made in whole or in part.

The driver of the bus must have a copy, certified by the Commission, of such permit in his possession during the trip.

DIVISION 5
TARIFFS

20. The rates and tariffs for a special or chartered trip are governed by the procedure of filing set out in the "Regulation respecting tariffs, rates and costs", made by Order in Council 148-82 dated 20 January 1982.

21. Tariffs must be filed for all categories of buses that a carrier intends to use. The tariffs for each category may vary in accordance with the equipment placed at the disposal of passengers, except those of Categories 1 and 4. They must be computed on an hourly basis or on a kilometre basis

22. The price charged for a chartered trip must be computed from the point of departure of the trip. If the point of departure is not a point of service of the carrier, the price charged may be computed from the point of service closest to the point of departure.

DIVISION 6
FINAL PROVISIONS

23. Except for those mentioned in section 7, special or chartered trips must not recur in such a manner as to constitute a regular public transport service.

24. This Regulation replaces the General Order respecting special or chartered trips (R.R.Q., 1981, c. T-12, r. 25).

25. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

SCHEDULE I
GROUPS OF MUNICIPALITIES

(1) Montréal, Côte-Saint-Luc, Beaconsfield, Dorval, Lachine, LaSalle, Montréal-Nord, Pointe-aux-Trembles, Saint-Léonard, Verdun, Westmount, Anjou, Baie-d'Urfé, Dollard-des-Ormeaux, Hampstead, Kirkland, Montréal-Est, Montréal-Ouest, Mont-Royal, Outremont, Pierrefonds, Pointe-Claire, Roxboro, Sainte-Anne-de-Bellevue, Sainte-Geneviève, Saint-Laurent, Saint-Pierre and Senneville;

(2) Trois-Rivières, Trois-Rivières-Ouest and Cap-de-la-Madeleine;

(3) Lévis, Lauzon, Saint-Romuald, Saint-David-de-l'Auberivière and Charny;

(4) Rouyn and Noranda;

(5) Shawinigan, Shawinigan-Sud and Baie-de-Shawinigan;

(6) Drummondville and Grantham Ouest;

(7) Sherbrooke, Lennoxville and the territory of the University of Sherbrooke;

(8) Québec, Sainte-Foy, Sillery, Cap-Rouge, Saint-Augustin-de-Desmaures, Ancienne-Lorette, Loretteville, Val-Bélair, Saint-Émile, Lac-Saint-Charles, Vanier, Charlesbourg and Beauport;

(9) Chicoutimi, Jonquière and La Baie.

2264-o

c. T-12, r.21

Regulation respecting public transport

Transport Act
(R.S.Q., c. T-12, s. 36)

DIVISION I
GENERAL PROVISIONS

1. In this Regulation, unless the context indicates otherwise, the following words and expressions mean :

(a) "permit" : a permit issued by the Transportation Board prior to 15 February 1973, a permit issued by the Commission des transports du Québec prior to 9 January 1974 or a permit issued under this Regulation ;

(b) "airport transportation, to and from" : the transport of persons and their baggage, where applicable, for a *per capita* remuneration by means of an autobus or a pleasure vehicle between an airport and unloading points or vice versa ;

(c) "public transport" : the transport for direct or indirect remuneration of persons and their baggage, where applicable, by motor vehicle, on a regular route and according to a definite schedule, with the exception of :

i. the transport of persons to whom the Regulation respecting transport by taxicab (c. T-12, r.22) and amendments thereto apply ;

ii. transport by means of a pleasure vehicle intended to be leased together with chauffeur and owned by a permit holder for such purpose ;

iii. the transport of persons effected by a funeral director where such transport is effected for a funeral under his direction ;

iv. transportation to and from an airport ;

v. transport by chartered or special trip ;

vi. the transport of pupils effected under a contract granted by a school board, a general and vocational college, a private institution or any other teaching establishment ;

vii. the seasonal transport contemplated in the Regulation respecting the seasonal transport of persons (c. T-12, r.23).

2. (1) A trip shall be a "chartered trip" where the service of an autobus is leased for the exclusive transport of a group of persons, according to a determined schedule and route, on a fixed date and for a single remuneration for the outward and inward trip, irrespective of the number of passengers.

(2) A trip shall be "special" where the service of an autobus is leased for the transport of passengers for a remuneration fixed *per capita* :

(a) on a route served by the operator but at hours not provided in his regular schedule ;

(b) on a route which the operator is not authorized to serve.

3. This Regulation is a transport regulation and, unless the context indicates otherwise, the words and expressions defined in section 1 of the Transport Act (R.S.Q., c. T-12), in section 1 of the Highway Code (R.S.Q., c. C-24) and in the Regulation respecting the interpretation of transport regulations (c. T-12, r.7) are part of this Regulation and have the meaning indicated in the said Acts or Regulation each time they are used in this Regulation.

DIVISION II
PUBLIC TRANSPORT

4. No person may provide a public transport service unless he is the holder of a permit for such purpose and such permit is in force.

5. The public transport permit shall authorize and bind its holder to effect, in accordance with its terms, a public transport service between defined loading points and unloading points, for a *per capita* remuneration and according to a determined route and schedule.

6. No person may obtain a new public transport permit except for the purpose of serving a territory formerly served under another permit ; the Commission may, however, change the terms of a permit already issued or authorize the transfer of such permit.

7. (1) Every application for the modification of a public transport permit shall be accompanied by the following documents, submitted in duplicate :

(a) a detailed description of the service or schedules whose modification is requested and, in the case of a change of route, a cartographic description of the route to be modified ;

(b) a detailed description of the modifications requested and, in the case of an application for the modification of a route, a cartographic description of such modification ; and

(c) a statement of the grounds in support of such application.

(2) Every application for the transfer of a public transport permit shall be accompanied by the following documents, submitted in duplicate :

(a) the statements of the last fiscal year of the permit holder and those of the person in favour of whom the transfer is requested or their opening balance sheet, as the case may be, unless they have already been furnished to the Commission ; and

(b) a detailed description of the vehicles used by the permit holder to effect the service described therein and of the vehicles which shall be used, where applicable, by the person in favour of whom the transfer is requested.

8. (1) On or before the last day of March of each year, without any notice or request being given to that effect, every holder of a public transport permit contemplated in this Regulation must prepare, certify and submit to the Commission, on the form prescribed therefor by the president, a detailed operations report for the fiscal year ending between 1 January and 31 December of the preceding year.

(2) A carrier who does not submit the report contemplated in subsection 1 shall not, for as long as he has not fulfilled this condition, obtain any change in his permit or increase in his rates.

9. No person shall obtain the modification of an existing permit for the purpose of obtaining the right to serve an airport which he is not already authorized to serve under such permit.

DIVISION III
AIRPORT TRANSPORTATION, TO AND FROM

§1. General provisions

10. No person shall provide a transportation service to and from an airport unless he holds a permit for such purpose and the permit is in force.

11. The permit for the transportation to and from an airport shall authorize and bind its holder to provide, in accordance with its terms, a transportation service to and from an airport in accordance with the tariff fixed by the Commission.

12. No person may obtain a permit for a transportation service to and from an airport permitting him to effect a service to or from an airport situated within the Mirabel Airport zone.

However, the Commission may issue an airport transportation service permit to the Commission de transport de la ville de Laval permitting it to effect a service with stops, from Mirabel International Airport to the Henri-Bourassa metro station in Montréal and return.

13. (1) The Commission may issue a permit for transportation to and from an airport to a person who applies therefor and who is :

(a) a physical person who :

i. is of the age of majority ;

ii. is a Canadian citizen or a person legally admitted to Canada to reside permanently therein as a "landed immigrant" and who has been assigned a social insurance number ; and

iii. is domiciled in Québec ; or

(b) a corporation which is incorporated in Canada and whose head office is situated in Québec.

(2) Every application for a permit for transportation to and from an airport shall be accompanied by the following documents, submitted in duplicate :

(a) the statements of the last fiscal year of the applicant or his opening balance-sheet, as the case may be, unless it has already been furnished to the Commission ;

(b) a detailed description of the proposed service, including a cartographic description of the routes ;

(c) a detailed description of the vehicle which the applicant intends to use for such purpose.

14. Notwithstanding section 13, no airport transportation permit may be issued by the Commission for service from Dorval International Airport to Laval and return, except to Autobus Mille-Îles (1967) Inc.

15. The Commission may authorize the transfer of a permit for transportation to and from an airport to a person who fulfills the requirements of subsection 1 of section 13 and who furnishes to the Commission the documents contemplated in subsection 2 of the said section.

§2. Service to the airports of Matane, Mont-Joli, Baie-Comeau (Pointe Lebel), Rouyn and Val d'Or

16. Any person who is the holder of a permit issued by the Transportation Board under the name of "taxibus" for the purpose of providing, in whole or in part, a transportation service to and from an airport may obtain a permit issued under this Regulation.

17. The Commission may, *proprio motu*, or upon application to that effect, issue the permits contemplated in section 16 and such, without costs or duties.

18. Any person who is the holder of a taxicab owner's permit issued pursuant to the Regulation respecting transport by taxicab (c. T-12, r.22) may obtain a transportation to and from an airport permit issued under this Regulation for the purpose of providing a service to one or other of the airports of Matane, Mont-Joli, Baie-Comeau (Pointe Lebel), Rouyn or Val d'Or.

19. The transportation to and from an airport permit contemplated in section 18 shall be issued for the vehicle to which the taxicab owner's permit is attached.

20. Where a person provides transportation service to and from an airport pursuant to the permit issued in accordance with sections 18 and 19, it may not provide a transport by taxicab service on a route which he is authorized to follow pursuant to transportation to and from an airport permit.

21. Where a person provides a transportation service to and from an airport pursuant to the permit issued in accordance with sections 18 and 19, he must :

(a) remove the dome light indicating that vehicle on which he is riding is a taxicab and replace it by a poster bearing the inscription "Airport" or "Transportation service to and from airport" ; and

(b) maintain posted up, at all times within this vehicle, the tariff applicable to this service in a place where it may be read conveniently by all passengers.

22. The holder of a transportation by taxicab permit who has obtained a transportation to and from an airport permit issued pursuant to sections 18 and 19 shall not thereafter transfer one of these permits without transferring the other at the same time, nor give up one of these permits without giving up the other at the same time.

23. (1) The suspension, revocation or cancellation of a taxicab owner's permit issued pursuant to the Regulation respecting transport by taxicab shall entail the suspension, revocation or cancellation of the transportation to and from an airport permit issued under sections 18 and 19.

(2) Likewise, the suspension, revocation or cancellation of a transportation to and from an airport permit issued pursuant to sections 18 and 19 shall entail the suspension, revocation or cancellation of the taxicab owner's permit issued pursuant to the Regulation respecting transport by taxicab.

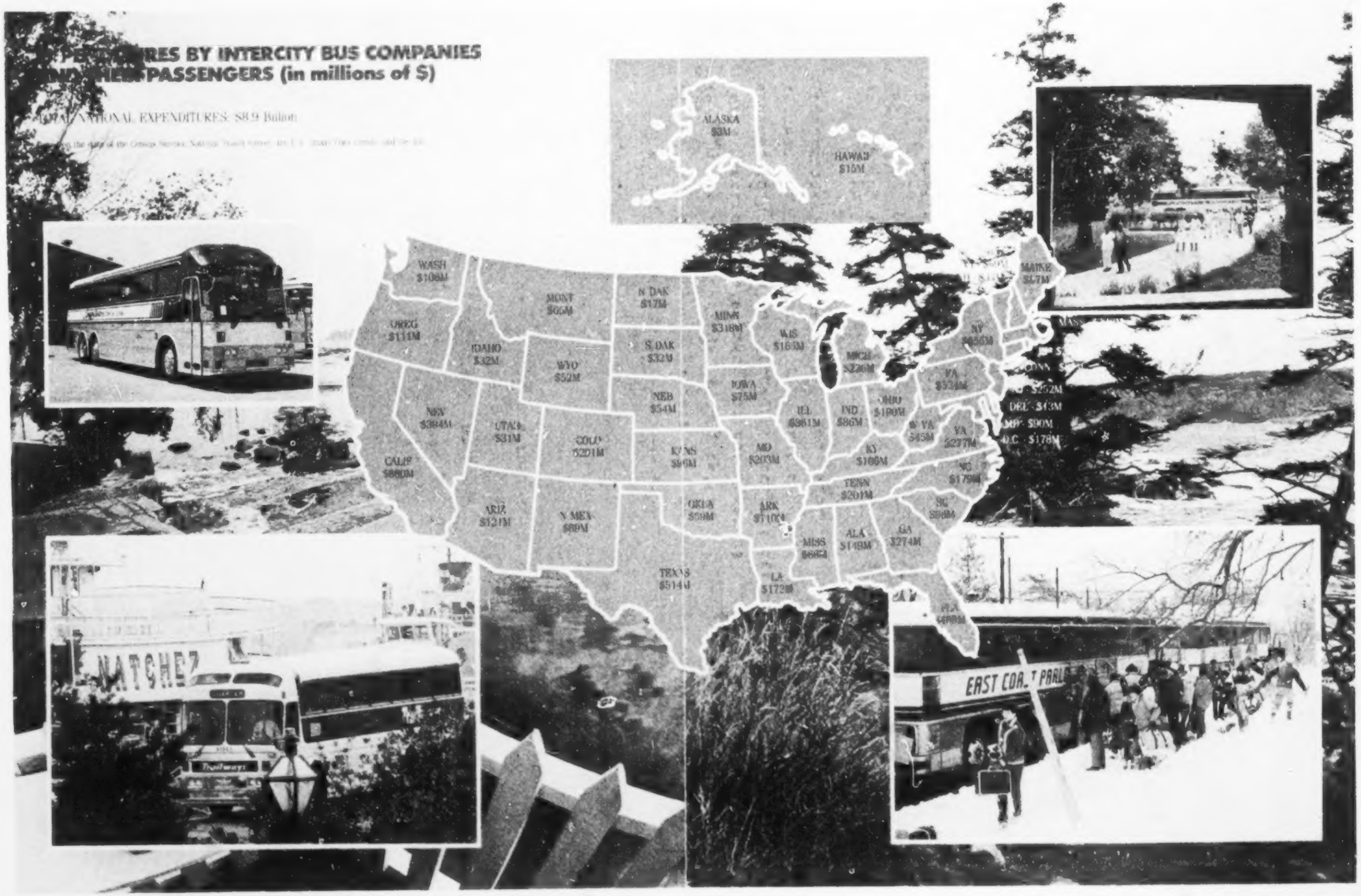
DIVISION IV
TRANSPORT OF PUPILS

24. No permit shall be required nor shall be issued to effect the transport of pupils under a contract granted by a school board, a general and vocational college, a private institution or any other teaching establishment.

DIVISION V
SPECIAL OR CHARTERED TRIPS

25. No permit shall be issued for the purpose of providing services of special or chartered trips to or from Mirabel Airport.

O.C. 4762-73, (1974) 106 O.G. II, 65
O.C. 690-74, (1974) 106 O.G. II, 727
O.C. 1255-74, (1974) 106 O.G. II, 1621
O.C. 1630-76, (1976) 108 O.G. II, 3084
O.C. 1979-77, (1977) 109 O.G. II, 3425

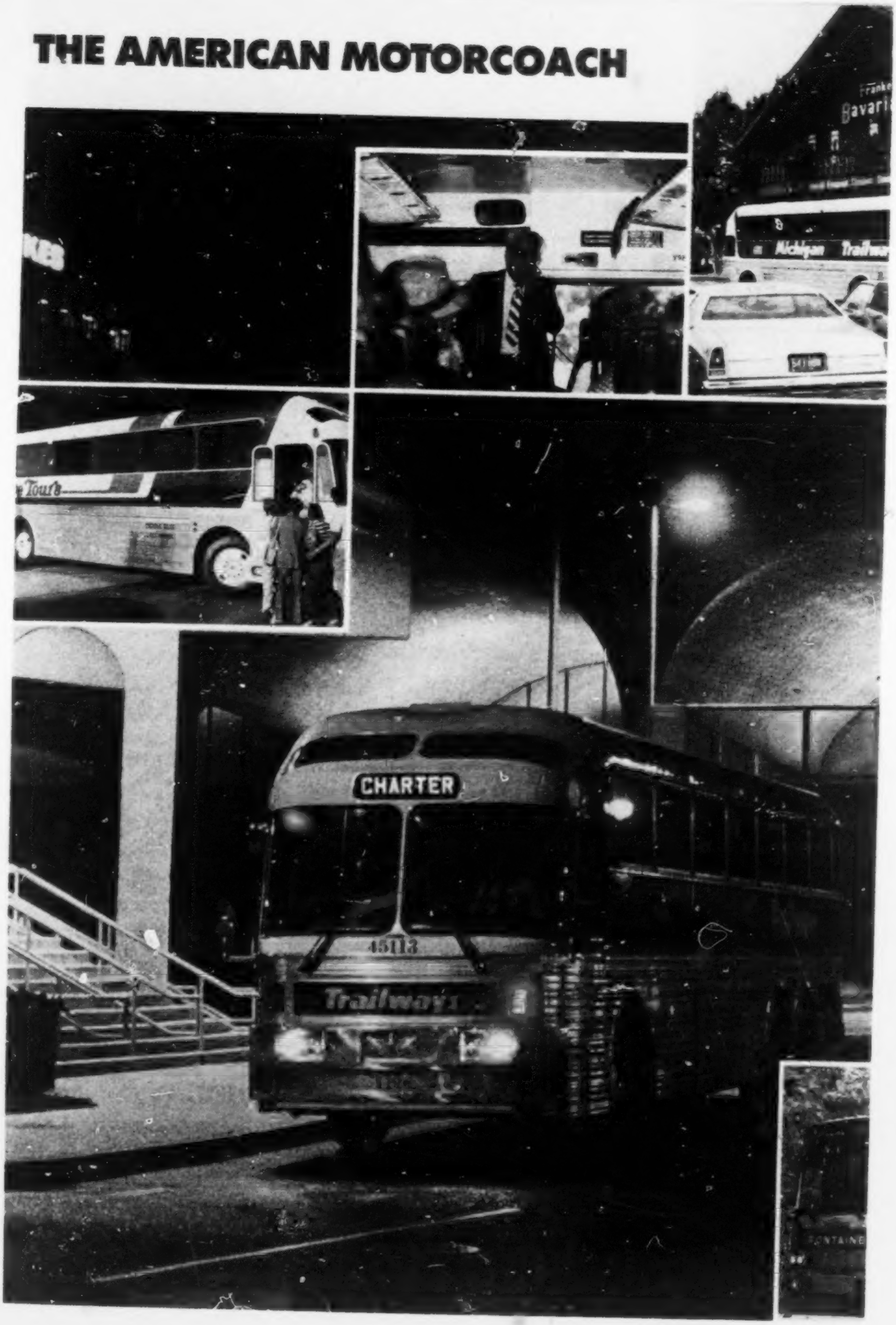


RES BY INTERCITY BUS COMPANIES PASSENGERS (in millions of $)

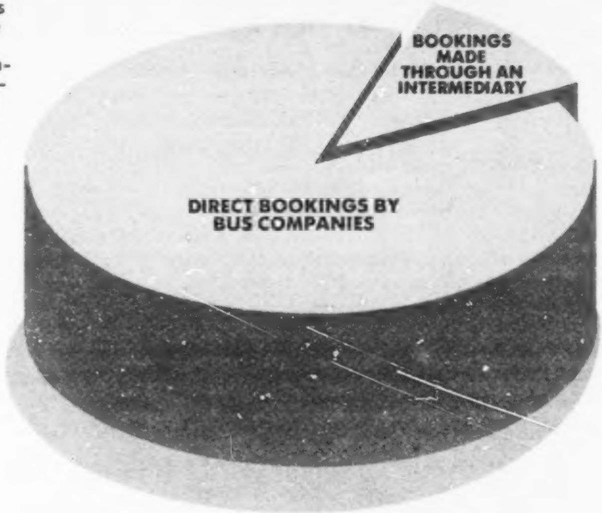
NATIONAL EXPENDITURES: $8.9 Billion

ALASKA $3M
HAWAII $15M
WASH $108M
OREG $111M
CALIF $880M
NEV $384M
IDAHO $32M
MONT $65M
WYO $52M
UTAH $31M
ARIZ $121M
COLO $201M
N MEX $89M
N DAK $17M
S DAK $32M
NEB $54M
KANS $96M
OKLA $59M
TEXAS $514M
MINN $318M
IOWA $75M
MO $203M
ARK $110M
LA $172M
WIS $165M
ILL $361M
MICH $226M
IND $86M
OHIO $190M
KY $160M
TENN $201M
MISS $66M
ALA $148M
GA $274M
FLA $409M
SC $98M
NC $179M
VA $277M
W VA $45M
PA $534M
NY $856M
MAINE $17M
MASS
CONN
NJ $252M
DEL $43M
MD $90M
D.C. $178M
NATCHEZ
Trailways
EAST COAST PARL

THE AMERICAN MOTORCOACH


Bavaria
Michigan Trailways
Tours
CHARTER
45113
Trailways

In 1982, 208 million passengers were booked on tours and charters by the intercity bus industry. This is nearly 56 percent of the total 370 million passengers transported by the industry last year. As the diagram illustrates, 88 percent of total charter and tour passengers carried were booked directly by the carriers themselves.



TOTAL 208 MILLION CHARTER & TOUR BOOKINGS

the business, all of which filed for authority to operate tours and charters. Existing bus operators are expanding this aspect of their business and are searching for new and larger markets. Many operators who have been offering only charter service are setting up tour packages for the first time to take advantage of the opportunities opened by deregulation.

The bus industry has undergone a rapid evolution in tourism since the oil embargoes in 1973-74, but the greatest rewards are still down the road. As bus operators expand their services, seek out and gain larger markets, the bus as a tourism vehicle will continue to grow in value and prestige. ABA members, with all the services and resources of the Association at their fingertips—especially the Marketplace, will arrive there first.

An ever increasing source of income for bus operators is revenue from hotel and other commissions. Bus companies book more than 16 million room nights.

	NUMBER OF ROOM NIGHTS BOOKED
Tours Booked Directly	12,904,000
Charters Booked Directly	3,453,000
Total	16,357,000

Mr. SUNIA. Please proceed.

TESTIMONY OF NORMAN R. SHERLOCK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN BUS ASSOCIATION, ACCOMPANIED BY CHARLES WEBB, COUNSEL; TED KNAPPEN, SENIOR VICE PRESIDENT, TRAILWAYS, INC.; AND BILLY RAY RHYNE, JR., PRESIDENT, AMERICA CHARTERS, LIMITED, GASTONIA, N.C.

Mr. SHERLOCK. Thank you, Mr. Chairman. My name is Norman Sherlock, president of the American Bus Association, which has a membership of over 3,000.

The gentlemen with me will be available for questions, although Mr. Knappen would like to comment briefly on the West Virginia testimony which was previously given, at the conclusion of my remarks.

ABA's membership includes private bus companies who conduct regular-scheduled service, airport and commuter service, as well as tours and charters. We also represent a very wide variety of entities engaged in travel and tourism throughout the country.

That membership mix reflects the fact that the bus industry has become not only a vital part of travel and tourism, but in many cases is its vital lifeline.

The Bus Regulatory Reform Act has not been in existence long enough to make definitive judgments about the full, long-range impact that it will have on the public and the industry. It is clear, however, that the legislation which this committee worked on has yielded some significant benefits already.

There is definitely a more intensely competitive environment in the bus business today and the public is reaping the benefits derived from a broader range of schedules and services, some of which are very innovative and unique.

Bus companies clearly will be able now to cope more effectively with State regulation which previously prevented them from adjusting schedules in a timely way, charging reasonable intrastate passenger fares, or discontinuing uneconomic service.

Aside from these positive things, there are six existing or evolving problems which we would like the committee to focus on; first of all, meaningful consideration on entry. The ICC is apparently implementing an automatic grant policy which is based on a view that no application for authority to transport passengers can ever be inconsistent with the public interest.

The Congress obviously did not intend that all applications for authority be granted without a genuine examination of the public interest or any meaningful consideration of fitness. But that appears to be what is happening.

Regulation of entry has become a regulatory charade or, in the words of Chairman Reese Taylor, a "monumental sham of paper shuffling". Entry regulations would not be a sham if commissioners made a conscientious effort to apply the public interest criteria spelled out by the Congress in section 6 of the Bus Act, and if meaningful fitness standards were, in fact, applied.

It is inconceivable that all of the 938 first-time applicants for charter and special operations authority could pass a rigorous safety check. Neither the ICC nor the DOT's Bureau of Motor Carrier Safety have really investigated the safety fitness of more than a handful of applicants.

Both agencies plead lack of funds and personnel, but we see no reason why they cannot make a genuine, concerted effort during the application process using the resources they have. Meaningful insurance requirements for all operators of buses could be a significant factor in enhancing bus safety as well.

Second, applications of subsidized transit systems for charter and special operations authority. Applications have been filed by recipients of substantial governmental financial assistance.

It would be contrary to the public interest and the national transportation policy to permit publicly-subsidized mass transit entities to depart from their established mission of providing commuter service and to expand their charter capability beyond their urban base of operations.

There is no reason for these entities to be seeking nationwide charter and tour authority when that service is and can be provided by privately operated companies and at no direct cost to the taxpayer.

The third thing that we would like the committee to focus on is one-carrier dominance of the bus industry. The bus industry is unique in having one carrier that is so huge and dominant.

Many smaller carriers are deeply concerned that the giant of the industry, Greyhound, will be able to exploit deregulation and use its immense resources to destroy them. Clearly, a central premise of deregulation is to increase competition, not to eliminate it. Many smaller carriers believe that is what will happen unless proper attention is paid to the problem.

These people believe that size is not only relevant, but critical in looking at the effects of the entry policy of the Commission and in determining where the public interest lies. An ICC administrative law judge has recommended approval of Greyhound's applications for additional operating authority, but has also recommended that the Commission investigate Greyhound's overwhelming dominance of the intercity bus industry and determine whether it was achieved by unlawful means.

Obviously, it would be inconsistent to approve the Greyhound applications without first resolving the issue of its dominance of the industry.

The fourth thing that we would like the committee to consider is the problem of international discrimination. We are having a problem with Canada. Our carriers are not permitted to originate or terminate charter trips.

Our carriers are not permitted to originate or terminate charter trips in the province of Quebec, but Canadian carriers are not so restricted. The same is true of other Canadian provinces.

We frequently receive complaints that U.S. carriers cannot operate in Canada with the same freedom and rights enjoyed by Canadian operators. Something needs to be done about this discrimination, and certainly it would not be in the public interest now to authorize a carrier like the Canadian National Railway to serve the United States when our carriers are barred from obtaining comparable operating authority in Canada.

The fifth thing that we would like to bring to your attention is the issue of the minimum required levels of insurance. On November 19, 1983, the prescribed insurance level will be $5 million for a bus with a capacity of 16 or more passengers and $1.5 million otherwise, unless a lower level is set by the Secretary of Transportation, and then if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.

No support exists for either finding. We do not advocate the higher minimum level of insurance to discourage entry by new people, but to assure the public that travel by bus is adequately insured.

As I have mentioned before, adequate insurance also has a direct bearing on safety. With respect to entry, the difference between premiums for $2.5 million and $5 million is negligible.

The sixth item is retention of antitrust immunity for collective ratemaking. Many smaller carriers believe that absent antitrust immunity, Greyhound will refuse to enter into rates for joint line service which are competitive with its own single line rates.

The antitrust laws might be cited as a justification for such a refusal. Closure of the Greyhound network to the joint line service of other carriers would enhance Greyhound's already dominant position.

Perhaps the most shocking development in the first year of regulatory reform has been the ICC's bold assertion that it can withdraw antitrust immunity from the industry by administrative edict.

At a hearing before the Motor Carrier Ratemaking Study Commission on June 16, Chairman Taylor was asked whether the Commission would terminate or could terminate antitrust immunity if the Study Commission so recommended. The Chairman replied, "Absolutely, without question."

Changing the scope of or terminating antitrust immunity for collective ratemaking is a prerogative reserved to the Congress, as we understand it. If there is any doubt about the ICC's lack of authority, we would recommend that the committee initiate appropriate action.

In conclusion, I would like to simply say this: The act was the product of a carefully crafted compromise. None of the participants in the legislative process were satisfied completely.

In most respects, the ICC has executed the will of the Congress, but in disregarding the public interest standard of entry and failing to enforce fitness standards, and in threatening to abolish antitrust immunity, the ICC has not carried out the rule of law.

Many crucial issues remain to be decided at the ICC or DOT. We urge the committee to pay careful attention to these issues, including subsidized transit authority applications, charter special applications, one-carrier dominance, discriminatory international practices, minimum levels of insurance, and retention of antitrust immunity for collective ratemaking, for these will all have a tremendous impact on shaping the future competitive posture of the intercity bus industry.

At this time, with your permission, Mr. Chairman, I would like to call on Ted Knappen to discuss with the committee the way in which they have gone about handling and responding to the communities in West Virginia in their discontinuance applications.

Mr. **Sunia**. Mr. Knappen?

Mr. **Knappen**. Thank you, Mr. Chairman. Let me refer briefly to the West Virginia situation and then relate it to the broader picture with regard to small community service.

In West Virginia, we have operated for roughly the last 25 years routes from Huntington to Welch and from Charleston down to Logan. That is all in the southern part of the State. This route has been a money-losing route for many, many years, and at present our average load factor on the route is 15 percent.

Our systemwide break-even load factor varies between 40 and 45 percent, so we would have to triple the ridership on this line to get up to break even, and it has been in a similar situation for a number of years.

Going back to the beginning in terms of our efforts to do something with the service after convincing ourselves that with our cost structure there was no way that we could run that profitably, we did not simply turn away from it.

We have twice found small bus companies who we believed were qualified to operate the service, and this goes back 7 years in the first case, and we have filed transfer applications with the West Virginia Commission.

The bottom line of those applications is that because of the processes and decisions of the West Virginia Commission, we have been totally unable to transfer that operation to small bus companies that we would have assisted, we would have trained, we would have put in business. And those guys could have operated that franchise if not profitably, at least at a break even, and then with their charter revenue on an incidental basis, had a successful operation and one that would have been very responsive to the people of southern West Virginia.

Having failed that, we have also told the State of West Virginia that we would be happy to operate the franchise under a subsidy arrangement, but we cannot do it without subsidy. Our losses on that one little Y-shaped route in southern West Virginia amount to over a half a million dollars a year. This is for a bus company that, nationwide, had an operating profit last year of $3 million.

So, we are talking about a major impact on our systemwide ability to provide service. Despite the fact that we have made this statement to the West Virginia Commission, and despite the fact it would only require from a public funds standpoint something in the neighborhood of a half a million dollars a year, there has been no subsidy offer forthcoming, nor has there been, to our knowledge, any serious discussion whatsoever of a subsidy effort.

This is despite the fact that the State of West Virginia has, the last time I checked, $1.8 million in unallocated section 18 small community service funding available, which would be a 50-50 match, but the 50-percent Federal money is in place.

It is despite the fact that in West Virginia right now, there are heavily subsidized Amtrak routes, commuter air routes and, right in the same communities that we are serving with Trailways routes, van service available to the people of those communities.

Yet, there has been absolutely no effort or even talk whatsoever about subsidizing the Trailways bus operations. With that kind of background, Mr. Chairman, I submit that the public need really cannot be that great, given all of the alternative subsidized programs that are available.

Now, let me just also comment briefly to say that we have not manipulated the schedule so that we would lose more money. The fact is that when you have a 15-percent load factor, you do not need to lose any more money than that.

We have adjusted the schedules over time to minimize our costs, trying to cut it down so we can run it with one driver and one bus and keep our costs under control, since there is little we can do on the revenue side.

With regard to advertising, there are signs on the terminals. We have advertised in the yellow pages in the communities involved. Our schedules are available at the terminals. There is schedule telephone information available in each of those communities.

It is true that with our very limited amount of advertising revenue in what is a low-margin business, we have not been able to commit advertising dollars to the southern West Virginia market, but that is because we have had to use it in a more cost-effective manner elsewhere in order to keep our system in operation.

But I think we have made every legitimate effort to retain that service there and, in fact, to find somebody who could pick up where we left off.

Now, I might just also relate that to the national level. We are the largest ABA member, so our nationwide numbers may be instructive in that regard. AASHTO has provided some statistics to the Motor Carrier Ratemaking Study Commission which indicate that Trailways, Inc. has abandoned, nationwide now, 36 communities that have not been picked up by other carriers, and it has picked up, it has started service to, 34 communities.

We serve something in the neighborhood of between 4,000 and 5,000 communities nationwide, so the amount of abandonment activity with regard to Trailways, Inc. has been negligible, and we are the largest ABA member. So I think it is fair to say that for ABA, in general, there has been very little abandonment activity on a nationwide basis.

Mr. SUNIA. Thank you, Mr. Knappen.

Before I ask a question of Mr. Sherlock, let me follow that up. Did the State of West Virginia give you any reason for not granting subsidy or for not offering subsidy?

Mr. KNAPPEN. No, sir. I mean, they just will not address the issue. For them, it appears not to be a realistic alternative and there has never been any statement whatsoever from them on that subject from anybody in the State government.

Mr. SUNIA. Thank you.

Mr. Sherlock, your statement indicates that 12 cases of discontinuance of service have been decided by the ICC. Aside from those, would you inform the subcommittee how many additional discontinuance cases have been appealed to the ICC and how much in the way of service has been discontinued under the act in cases not appealed to the ICC?

Mr. SHERLOCK. Mr. Chairman, I would like our legal counsel, Charles Webb, who devotes his time to those types of filings to answer your question.

Mr. WEBB. Mr. Chairman, in addition to the 12 decided cases noted in appendix C to Mr. Sherlock's statement, there are eight other cases now pending before the Commission, one case appealed to the Commission by the Oklahoma Transportation Co., an ABA member; one case appealed by Trailways, an ABA member; and the six other pending cases were filed by Greyhound.

We have no information about the number of cases which have been filed at the State level and not appealed to the ICC.

Mr. SUNIA. Thank you. Has your association had an opportunity to review the notice requirements proposed in the Simon-Percy bill? If you have, what is the association's opinions on those requirements?

Mr. SHERLOCK. Mr. Chairman, we have looked at that proposal. It was an issue before this committee when the original bill was considered and was discussed at length by the industry, State officials, and the staff and members of the committee.

It was decided at that time that it was not necessary to graft an additional process on top of the very balanced procedures for notification and discontinuance of service when the bill was finally passed.

Our mind is not closed, however, and I would certainly be willing to meet with the State officials to discuss the matter further.

Mr. SUNIA. Thank you.

Congressman Shuster.

Mr. SHUSTER. Thank you. We certainly appreciate your testimony today, gentlemen. Are there any specific areas of the act in which you would recommend that there be amendments made?

Mr. SHERLOCK. Not at this point. I think those cases which are pending before the ICC might raise that need depending on their outcome. The implementation of the balanced act is what is very important to us, the entry provisions being of great significance in that there does seem to be no meaningful examination of entrants and everyone can get just about anything they want very quickly.

We think that if there is not a sufficient focus on that, it certainly would require further amendment.

Mr. SHUSTER. I would simply say that you today join a parade of witnesses who have been very critical of the ICC, and we have scheduled a hearing date in November, I believe, to get them up here and I am looking forward to their testimony with great anticipation.

Thank you.

Mr. SUNIA. Congressman Bosco.

Mr. BOSCO. Thank you, Mr. Chairman, and I regret not having the opportunity to hear the testimony, but I will read it.

I wonder if any one of you gentlemen could address this question that at least is most important to me, and that is of the rural, outlying areas that it appears have—many of those areas have lost service altogether.

Do you believe it is realistic for us to think that those areas will regain bus service without deep subsidies, or let us say without subsidies at all? In other words, will the private market, so to speak, jump in as we once thought that it would?

Mr. SHERLOCK. Well, I am not sure that you are going to see an instantaneous response where carriers come in right away when someone is discontinuing service. I think you will see a certain percentage of those communities being served by perhaps not a bus that carries 41 to 45 people, but by a van or some other smaller bus with some entrepreneur who comes in.

Certainly, in the act when it was passed, that problem was contemplated and there is no barrier. Where there is no service or where service is discontinued, in the provisions of the act, all the carrier has to do is to demonstrate fitness and it can be immediately into serving a particular point.

The issue of subsidy has been examined many times in relationship to this industry. In 1978, we got authority from this committee in what was referred to as section 21 and 22 for a subsidy program for Federal funds to be directed on a matching basis to the improvement of terminals and to the maintenance of rural service.

The problem was that the Department of Transportation was completely opposed to a separate subsidy program and withdrew those programs completely by later action, and they simply were not renewed, so that any program along those lines was non-existent.

There is the prospect in what is now known as section 18 for some assistance to these States who have rural problems, and perhaps there is some recourse there.

Mr. BOSCO. Well, would your answer be then that it is not realistic to expect that we will resolve this problem in any significant way without subsidies? Is that your answer?

There has been some time, at least, for these smaller, more efficient carriers to get into the business; probably not a lot of time, but some time. And the evidence is that there is no substantial entry into the rural route business.

What I am wondering is must we now expect literally decades of Federal or State subsidies for what was once subsidized by your industry, in effect.

Mr. KNAPPEN. Mr. Bosco, I am with Trailways. Let me take a crack at that. I think that to a large extent, that service has been or will be picked up by small carriers. Within the Trailways system over the last 2 years, Trailways, Inc. has transferred to independent, small members of the Trailways system in the neighborhood of 25 significant routes that were unprofitable for Trailways, Inc., but have proven for the most part to be profitable to the small operators.

Also, before you came in, I referred to the AASHTO numbers that have been provided to the Study Commission that indicate that in Trailways' case, we have abandoned a total of 50 small communities nationwide out of the roughly 5,000 that we serve. And of those 50, 15 have been picked up by smaller, independent carriers.

Others may be picked up, but I think the point is that, at least from the Trailways standpoint and probably for the rest of the ABA membership, there is not going to be a major—there has not been a major abandonment problem on a nationwide basis, and it should be less now that the initial batch is out of the way.

The other thing I would say about section 18, which I became a little familiar with when I was researching this West Virginia question, is that on a State-by-State basis, there is an incredible amount of unspent, reserved section 18 small community money that is available out there for the States right now on a 50–50 match.

The problem may have something to do with that it was being administered by the FHWA, which is not as expert at giving out money as UMTA. It has now been moved over to the Urban Mass Transit Administration, and that may improve the administration of the program.

But there is a fairly substantial subsidy program authorized and appropriated. The funds have simply not been expended.

Mr. BOSCO. Thank you. Thank you, Mr. Chairman.

Mr. SUNIA. Do you have anything further, Mr. Sherlock?

Mr. SHERLOCK. No.

Mr. SUNIA. I wonder if Mr. Rhyne has something to say. I know I have not called on him.

Mr. RHYNE. Thank you, Mr. Chairman. I would only like to address the lack of enforcement. I am a third generation busman. The only thing I have ever heard—the most important thing is the protection of the traveling public.

At the present, I think that is really on the bottom of the list. I see no protection of the traveling public as much as it used to be. But with the new regulations, I really cannot see it.

I am mostly in the charter and tour business. There are a lot of new bus people not in regular route, but in this end of it. And I say lack of enforcement due to the fact that with these new entrants, they are people that are just buying buses, going into the bus business with no insurance, with no intent of getting insurance, with no intent of applying for a certificate, no intent to be legal.

When we protest, there is no one to enforce this. That is the reason I say there is very much a lack of protection for the traveling public that we might say a dumb traveler gets on a bus that has no insurance.

There is no one now to protect them because there is no one to protest to that will call up this carrier and even ask him if he has insurance.

Thank you.

[Subsequently, the following was received for the record from Representative Nick Rahall:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 27, 1983.

Hon. GLENN ANDERSON,
Chairman, Subcommittee on Surface Transportation,
Rayburn House Office Building, Washington, D.C.

DEAR GLENN: During the Subcommittee's oversight hearing on the Bus Regulatory Reform Act this week, it is my understanding that the representative of Trailways, Mr. Ted Knappen, testified that West Virginia currently has $1.8 million in unallocated Section 18 small community funds.

Mr. Knappen made this statement when he said that Virginia Stage Lines, a wholly-owned subsidiary of Trailways, would be happy to continue operating in Southern West Virginia if it was subsidized. He noted that the West Virginia Public Service Commission will not address the subsidy issue.

After checking with the State, I would like to set the record straight as to the amount of Section 18 funds available in West Virginia. At this time, West Virginia only has $544,719 in unallocated Section 18 funds with $446,000 earmarked for operating assistance and the remainder to be used for administrative purposes. The State has recently been informed that it will receive $1.2 million in Section 18 funding in fiscal year 1984. This money will be used in 1985 (West Virginia uses current fiscal year allocations in the following year) and of this amount, it is estimated that only $25,000 will remain unallocated by the end of 1985.

If possible, I request that this letter be made part of the hearing record.

With warm regard, I am

Sincerely,

NICK J. RAHALL II.

Mr. SUNIA. Gentlemen, thank you very much.

We now have the United Bus Owners Association. Mr. Nagle, we have your prepared statement and it will become part of the record in its entirety at this point.

[Statement referred to follows:]

STATEMENT OF UNITED BUS OWNERS OF AMERICA

Mr. Chairman, my name is Paul Nagle. I am assistant to the executive director of the United Bus Owners of America (UBOA), a trade association enrolling Trailways and more than 1800 independent, privately owned bus companies. No other association, anywhere, serves so large a number of common carriers of passengers.

Mr. Chairman, UBOA has asked to appear before you, today, to express our views on the manner and degree to which the cognizant agencies, United States Department of Transportation (DOT) and Interstate Commerce Commission (ICC) have implemented the Bus Regulatory Reform Act of 1982 (Public Law 97-261).

After living with the new law for nearly one year, UBOA believes that in Public Law 97-261, the Congress enacted a very useful piece of legislation. Any problems we have experienced are with the law's implementation, rather than with its content.

Mr. Chairman, members of this Committee already know that UBOA is extremely proud of our safety program. As our processes continue to improve, the safety program becomes increasingly valuable. Our five fully equipped patrol cars are constantly on the road. Except while at rest, during visits to properties of our members, the cars literally patrol the highways. During the month of August, 309 road patrol reports were presented to bus owners. Of that total, 259 reported violations; only 50 were observations based on drivers who were operating correctly. Of that number (309), 278 were UBOA members; the remaining 31 represent reports that were given to owners who are not (or were not, previously) enrolled in UBOA.

Also during August, there were inspections at 59 locations. We hope it will be reassuring to this Committee, that full safety compliance had been achieved at 26 of those 59 locations. In addition, 27 properties revealed only minor defects, while major problems were identified at six sites.

Mr. Chairman, having been surprised at some prestigious independent bus owner names appearing among the six, we asked our national safety director, Bruce L. Main, what degree of alarm should be registered. The answer was immensely encouraging. No alarm whatever, we were told, should be experienced. None of the six, said Mr. Main, presents a recurring problem; our inspections have accomplished their purpose.

Having set the stage, Mr. Chairman, allow me now to discuss the administrative problems we have discerned.

In the period since November 19, 1982, the ICC has approved hundreds of applications for operating authority. If the applicant has on file, a certificate of insurance (Form BMC-91), and if there are no protests, ICC gives its approval, routinely, even before the applicant has come forward with a resident agent in each State, and before having presented a tariff covering the types of service authorized in the certificate.

Except for BMC-91, ICC accepts from the applicant, self-certification of safety compliance. The prescribed language appears in Title 49 of the Code of Federal Regulations, Part 1160.75(g):

"(g) Safety evidence: Motor passenger carriers holding ICC authority shall indicate that they are in compliance with D.O.T. safety regulations. New entrants shall state the following: 'I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.' "

In a "note to applicants," ICC then goes on to say where in the Code, the pertinent safety regulations may be found.

Our experience is that few applicants are really in compliance, or actually possess the information to which they attest familiarity. Generally speaking, the safety handbook left by a UBOA safety director, is the carrier's first exposure to the standards with which each carrier is required to be in compliance. The typical carrier is stunned when the inspector recites the sizes of monetary penalties assessed by DOT for failure to comply. Literally, our members, taken collectively, have been saved tens of thousands of dollars because our inspectors visited their premises, doing so before any DOT inspection personnel had put in an appearance.

More significantly, for the common good, our safety inspections have prevented accidents. We have both a selfish and an altruistic interest in accomplishing such prevention. Since virtually every one of our 1800 members is insured with us, every ounce of prevention translates into lower damage pay-outs. But beyond those economies, there is the very real benefit to the public, resulting from each prevented accident.

UBOA notes with approval, the progress of S. 1108, the Danforth Bill, Title III of which would set up inspection standards for motor vehicles weighing over 10,000 pounds, having a capability of seating 15 or more passengers, operation of which, "affects trade, traffic, or transportation between a place in a State and a place outside such State."

DOT already has authority to inspect vehicles registered with the ICC, but the enforcement staff is woefully inadequate to the task of achieving universal safety compliance. S. 1108 would remedy that situation by using dollars made available under the Surface Transportation Assistance Act (STAA).

Whether or not S. 1108 becomes law in its present form, UBOA intends to continue to cooperate with enforcement personnel of ICC, DOT and any appropriate agency in any State.

We draw to the attention of ICC consumer assistance administrators, unsafe or illegal operations by carriers who are not members of UBOA. For companies who are members, we insist that there be proper ICC or State certification. We make it a practice not to enroll non-conforming carriers. Furthermore, our insurance agent of record is notified of the failure of a non-conforming carrier to set in motion the procedures for achieving compliance with DOT's safety requirements.

For example, we worked beside Tennessee authorities at the site of last year's world's fair. At recurring intervals, we assign a patrol car to week-long duty at Disney World. Further, we intend to have safety compliance mechanisms in place on the site of the 1984 Exposition at New Orleans.

Mr. Chairman, UBOA is of the opinion that the paper chase of ICC's self-certification, safety fitness procedure is the least laudable of ICC's enforcement activities. Lacking the inspection requirements contained in S. 1108, UBOA believes ICC has other options, none of which has been exercised. One such option would have been to include in (49 CFR) Part 1160.74, "Information to be submitted by applicants," the requirement that an inspection report be included.

Another option would have been to include in (49 CFR) Part 1160.75(g), a requirement that the applicant certify referenced vehicles to be roadworthy; that they are in safe operating condition; have been adjudged so to be, by impartial professionals.

Some of what has been said here, will appear to be critical of ICC. No criticism is intended, in any way, to detract from the phenomenal way in which, in the wake of enactment of H.R. 97-261, ICC acted with impressive swiftness to release comprehensive regulations for administration of the Bus Regulatory Reform Act. UBOA does not argue that the options, outlined above, should have been part of the Commission's rulemaking on November 24, 1982 when application procedures were promulgated. UBOA does plead that, in the interim, since November, a period that has witnessed a spate of ICC rulemaking, much of it controversial, there was ample opportunity for the Commission to have articulated safety requirements that would be more incisive than are the ineffectual standards, currently prevailing.

UBOA suspects that behind ICC's non-issuance of incisive rulemaking, is the matter of lack of jurisdiction, rather than an absence of will. Current law, as you are well aware, Mr. Chairman, gives regulatory authority to ICC, but assigns safety enforcement to DOT. In that regard, we are fearful of an absence of will on the part of the Department of Transportation.

DOT disappoints UBOA on two major accounts, in the frame of PL 97-261:

(1) Proposed rulemaking would take maximum advantage of the law's delay procedures (three years from date of enactment) on maximum insurance requirements; and

(2) would set insurance standards at the threshold (minimum) level permissible, $2.5 million.

UBOA urges our members to carry at least $5 million, and we declare $10 million to be advisable.

Unless, before November 19, 1983, DOT makes final its rulemaking on minimum standards of financial responsibility, the statute's upper level ($5,000,000) would become effective automatically. This is one instance in which we would applaud bureaucratic delay. Emphatically, UBOA does not welcome the likelihood that $2.5 million will become the standard on November 19, and that it will be continued for two years, thereafter.

UBOA will leave to others the freedom to argue that either entry or exit procedures have worked less productively than this body may have intended. Our comments will go to two flawed actions, one each on the part of DOT and ICC.

In summary and in conclusion, UBOA feels strongly that DOT should have moved with alacrity to proposed rulemaking which would have established, at the earliest possible moment, the $5 million minimum level of financial responsibility, a level which, effectively, we see as being postponed until November 19, 1985.

Absent statutory standards for safety compliance, the Act under review still affords to ICC, ample latitude for prescribing fitness standards. We have mentioned two such options, neither of which has ICC come remotely close to espousing. No, the Commission's only fitness criteria are the filing of insurance certification, a resident agent to be identified in each State wherein the applicant seeks certification, and a tariff which will prescribe fixed rates and standards.

Mr. Chairman, UBOA hopes that this Committee and the entire Congress will direct ICC to enforce more relevant fitness criteria, both on first-time applicants and on previously certificated carriers. We hope, too, that the Congress will articulate disappointment over failure by DOT to move authoritatively, in prescribing suitable levels of financial responsibility.

It is amazing that the Bus Regulatory Reform Act has functioned so well with so little implementation. UBOA is certainly appreciative of the opportunity to appear before you to express our enthusiasms; to convey our disappointments that the cognizant agencies, ICC and DOT, did not anticipate and divert the reservations we have uttered. We hope both agencies may be persuaded to institute minor course changes, thereby enabling our enthusiasm to be free of all negative implications.

Mr. SUNIA. Please proceed.

TESTIMONY OF PAUL NAGLE, ASSISTANT TO THE EXECUTIVE DIRECTOR, UNITED BUS OWNERS ASSOCIATION

Mr. NAGLE. Thank you, sir. My name is Paul Nagle, and I am assistant to the executive director of the United Bus Owners of America. We represent 1,800 of the exact type of company in which you folks are interested in regard to supplanting service which other people might withdraw.

What is more, the members whom we represent have the appetite and the expertise for doing it, as long as they may anticipate some degree of probable success.

During the recess for lunch, for example, I went out in the street, I went down to my car, and I saw a bus from Eyre Bus Service outside. It was marked Montgomery Village, a beautiful GMC bus. And it was headed for a commuter route which was deserted by another small entrepreneur who was operating that route with rather dilapidated transit buses and could not make a go.

The same entrepreneur, Harry Eyre, has bought a route from Greyhound and is operating between Frederick and Washington, D.C., and has made that profitable.

We in the United Bus Owners are not concerned that should we restore what is called a profit base to an unprofitable line, that

Greyhound would come back and attempt to resume operations on a line it previously abandoned.

We believe that the Eyre example is perfect, that Eyre has made the lines profitable. His relationships are good—he is a member of the Trailways family; his relationship with Greyhound is eminently wholesome; and I can see only good things coming out of the type of entrepreneurship which our people represent.

I had a very profitable morning today. I learned a great deal from the testimony of the persons from the States and even more profitably, I was able to talk to the gentlemen from California and from Illinois and to discuss with them what could be done by members such as ours, in terms of restoring service or providing service to rural areas.

And that brings us to a case which is off the beaten track here, but which is very, very pertinent. Today the United Bus Owners sent to the Federal Highway Administration a position paper in regard to FHWA's proposal on truck weights and sizes. And we took what was a very bluntly antagonistic viewpoint saying that the entire position paper is an affront to the bus industry, that trucks are mentioned throughout the paper and buses are mentioned only once, even though we are held hostage by truck size and truck weights.

And this is important for us and for the purpose of this discussion this morning, because in my talks with Mr. Meyers a few moments ago, we talked about withdrawing service, and he spoke about some lines in Illinois where, conceivably, persons who are moving package express, could be attracted to use scheduled bus service for that purpose; and that the route, based on package express, might be made profitable.

And I was reminded of the fact that Trailways has been paying a great deal of attention to expanded use of package express through marketing a good service; that some of their coaches have been modified to provide added space for package express.

And I said to Mr. Meyers that I was brought up short last week when a member of ours in Nashville, Tenn. called and asked whether he might be able to extend an MC-9 coach from 40 feet to 48 feet, giving two additional bins for transporting package express; and I had to tell him that he could not because he is the same as a straight truck, that a 40-foot tractor may pull a 48-foot trailer, making a total of 88 feet, according to my calculations, but that he may not expand a 40-foot coach into a 48-foot coach because that violates a single unit length requirement of the STAA.

So I suggest that there are many things short of amending the act which hold promise, not the least of which is determining what types of alternate customership there might be on the rural routes from which trunklines seek to withdraw. That is one thing.

Billy Ray Rhyne spoke about enforcement. And I certainly concur that enforcement is needed. That is not made available now. We have in the United Bus Owners a fleet of five fully equipped station wagons, and we are on the road constantly with those station wagons. We make reports to member and nonmember alike about driving behavior on the highways.

We stop vehicles which appear to be unsafe; we cannot detain them, but we do stop them and advise the operator of the vehicle that he has a safety problem. And we go to places like Orlando, to Disney World. We were at last year's Tennessee World's Fair. We will be at New Orleans. We will be at the Olympics next year. And we work very carefully and closely with whomever cares to attempt to enforce the safety requirements of the act.

Bruce Main, our national safety director, got from the Office of the ICC in Atlanta a flat out declaration of incorrectness on his part when he said that he observed at Disney World that the ICC was concentrating more heavily on carriers which displayed ICC markings on their sides than those which displayed no markings, and which were conspicuously illegal.

I would like to make one suggestion, that if this committee does nothing else, it ask the ICC for an accounting of the extent to which it has enferced the illegal operations section of the Bus Regulatory Reform Act. We in the United Bus Owners supported what became the Bus Regulatory Reform Act. We did so enthusiastically because of two sections of what became the act.

One is the illegal operations, which imposes a penalty for each day of illegal operations. We support it because of the provision of minimum financial liability, which goes to $5 million, which currently is set by ICC only at $500,000. And I would take a little bit different viewpoint than Billy Ray Rhyne took this morning in terms of insurance. It is that we went from 1,200 to 1,800 members in the period—in the 11 month period since the BRRA is in effect.

And my experience has been in talking to very many of those people that come to us—we have an 800 telephone number, and that is a dangerous thing, when you have 1,800 people who are in need of information.

And I have found that they are as fanatical about having the proper insurance as they are about—as the established carriers are.

For example, this past week, I had a call from a company in South Carolina who said that the ICC office told him that he needs only $500,000, where do we get off telling him he needs 5 million? And our answer, of course, was that we did not tell him he needs 5 million; we encourage 5 million because just as Mr. Sherlock said, 5 million is there for the protection of the traveling public, and we do not put it as a barrier for entry.

The amazing thing is that these newscomers with two buses have no problems about getting $5 million of insurance and carrying it. And so I am disappointed that the Federal Highway Administration in its current rulemaking, its pending rulemaking, which has not yet taken effect, even though the final date is November 19, 1983, that they propose to go no higher than 2.5 million.

Now, Mr. Sherlock said—and I echo his sentiments completely—to go from 2.5 million to 5 million is nothing. I am going to have 5 million on my car next week because the difference in the premium is so minor and the coverage is so much better that I think I cannot afford to go without it.

On this basis, I would like to say that we have four recommendations, four statements. We are ready. The independent bus company is ready to assume whatever entrepreneurship is necessary to provide service to whatever community is about to be bereft of that service, provided only that we are given a fair shake in making it profitable and being able to make the thing float.

Second, and again I associate myself with what Mr. Sherlock said, if we are to be divested of antitrust immunity, then we are in really serious trouble, because a company such as I mentioned, Harry Eyre, coming from Frederick to Washington, D.C., without freedom to negotiate or discuss with Greyhound and Trailways what his fares, what his connecting fares should be, is simple assassination of the free market system.

I think we do need interlining. We do need an understanding about what an equitable rate structure should be. We finally—or thirdly I think that the ICC, having done what it said it would do and having gone only to the insurance feature of safety, should be admonished to go beyond that, and to show that as an entitlement to certification an applicant be able to demonstrate that the vehicles which are proposed to be operated are indeed in a travel worthy condition, and that they carry not only the requisite amount of insurance, but that they do meet minimal safety standards.

And I think, finally, if I may finally for the final time say that 5 million is a reasonable amount of insurance, and in any contact that you have with the Department of Transportation in regard to what the minimum should be, I plead that the 5 million level be kept carefully in mind. Thank you very much.

Mr. SUNIA. Thank you, Mr. Nagle. Congressman Shuster.

Mr. SHUSTER. Mr. Chairman, thank you very much.

We appreciate your testimony. The chairman of our full committee has called a 2 o'clock meeting for the ranking member of the full committee and myself and the chairman of the Surface Transportation Subcommittee. So I have no alternative but to leave now. Mr. Chairman, we have other members of the minority on their way here, and I do not want to hold things up. More accurately, I am sure the chairman does not want to hold things up.

So I just have to leave and I apologize.

Mr. SUNIA. I will speak for both of us.

Mr. Nagle, at page 6 of your filed statement you discuss implementation of the insurance requirements of the act. Has the department given any indication as to when it will release the minimum financial requirements?

Mr. NAGLE. According to the statute, unless it releases those criteria between now and November 19, 1983, the 5 million minimum will go into effect. So that I have every reasonable expectation that between now and November 19, the Federal Highway Administration will indeed announce that the minimum is 2.5 million for the next 2 years, which would end on November 19, 1985. We think that—we are disappointed. We are disappointed, first, that the Federal Highway Administration waited so long to issue its standards.

Second, we are disappointed that it went to 2.5 instead of going to the maximum concerning which I hope it has been made clear by Mr. Sherlock and by me that it is not an intolerable burden; it is a burden which any operable company can sustain.

Mr. SUNIA. You know, the Super Bowl is going to be played in Tampa in January. I will make sure that the insurance on the bus that will carry the Redskins from the hotel to the field will be——

Mr. NAGLE. What was the question? Please forgive me.

Mr. SUNIA. I just wanted to make sure the bus that will carry the Redskins——

Mr. NAGLE. It will be, you may be sure.

Mr. SUNIA. Thank you.

Mr. NAGLE. May I say something? While we are talking about that, a bus, which was not our bus, was to pick up the Orioles in Detroit on the evening of that fateful day when they had a massacre in the first inning, and the—part of the reason why is that the Orioles had played here the night before and they got out to Detroit at 3:30 in the morning, and the bus that was supposed to be there to pick them up, was not there.

They were required to go by taxicab to their hotels, and so by the time they—they only had 3 or 4 hours of sleep to begin with. By that time they were left high and dry. So we will be sure that the buses at Tampa are in good shape.

Mr. SUNIA. The way it has ended, everything is forgiven.

Mr. NAGLE. That is true.

[Subsequent to the hearing, the following was received for the record from Mr. Nagle:]

UNITED BUS OWNERS OF AMERICA,
Washington, D.C., October 28, 1983.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Surface Transportation, House Committee on Public Works and Transportation, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At the close of the hearings on oversight of the Bus Regulatory Reform Act, it was announced by Mr. Sunia, on October 26, that the record would be kept open for essential, additional material.

In keeping with that authorization, it is requested that I be allowed to supplement my testimony by including the text of a statement concerning the application by New Jersey Bus Transit Operations, Inc., for nationwide charter operating authority. The statement, issued jointly by the executive directors of New Jersey Transit and of United Bus Owners of America, announced agreement by the parties for withdrawal of the cited application, thereby calming a very turbulent atmosphere within the bus industry. The turbulence which developed at the time of filing the controversial application, led to separate protests by approximately one hundred UBOA members. UBOA expects, now, that withdrawal by New Jersey Transit will lead to parallel actions by others assisted transit authorities which have filed for operating authority corresponding to that sought, previously, by New Jersey Transit.

Thank you for making possible the inclusion of this surpassingly important material for our statement.

Sincerely,

PAUL A. NAGLE,
Assistant to the Executive Director.

Enclosure.

JOINT STATEMENT OF JEROME C. PREMO, EXECUTIVE DIRECTOR, NEW JERSEY TRANSIT, AND WAYNE J. SMITH, EXECUTIVE DIRECTOR, UNITED BUS OWNERS OF AMERICA

Due to the substantial controversy and acrimony surrounding the nationwide special and charter application filed by New Jersey Transit Bus Operations, Inc., the executive director of New Jersey Transit Bus Operations, Inc., and the executive director of United Bus Owners of America (UBOA) have held discussions regarding the issues of the application.

As a result, much better understanding of the feelings of the various parties has been reached. UBOA has secured a better understanding of the basis upon which New Jersey Transit Bus Operations, Inc., filed its special and charter application. In turn, the company now more fully appreciates the substantial pressures on the independent passenger carriers as a result of the changes in the industry and state of the national economy, compounded by the new and more vigorous competition from airlines.

Based on these discussions, New Jersey Transit Bus Operations, Inc. has determined to withdraw its Sub. 470 application. By this action, it hopes to achieve more harmonious relationships with its fellow transit operators and to concentrate its efforts more fully on meeting its prime mission, which is to provide commuter and regular route service to the citizens of the State of New Jersey. It already possesses sufficient authority to conduct special and charter operations which allow it to make efficient use of all its facilities, consistent with all applicable federal regulations governing such operations.

Mr. SUNIA. We will now have the Greyhound Lines, Inc., Mr. William McCracken.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF WILLIAM L. MCCRACKEN, SENIOR VICE PRESIDENT AND ASSISTANT TO THE CHAIRMAN OF THE BOARD, GREYHOUND LINES, INC., PHOENIX, ARIZ.

Mr. Chairman and members of the Committee: I am William L. McCracken, Senior Vice President and Assistant to the Chairman of the Board of Greyhound Lines, Inc.

We appreciate this opportunity to present our views on the first eleven months of intercity bus deregulation under the Bus Regulatory Reform Act of 1982 (Bus Act).

INTRODUCTION

In essence this is the first report card reflecting the actions and attitudes of the various entities that are part of the bus industry or which regulate the industry. The Interstate Commerce Commission, the majority of the state regulatory agencies, and most bus companies have earned honors for accepting and implementing deregulation in the spirit envisioned by Congress. On the other hand several carriers and one association of carriers have engaged in a protracted and costly effort to resurrect at the ICC the anti-Greyhound two-tier approach to regulation that Congress specifically rejected. One carrier has also asked the ICC to rewrite the Bus Act to deprive Greyhound of pricing freedom and to deny Greyhound the right of independent action guaranteed by the Bus Act. Their report card should reflect failure. Several state regulatory agencies receive the same failing grade because of their refusal to recognize the existence of the Bus Act or their deliberate efforts to frustrate the intent of Congress.

This oversight hearing provides a welcome opportunity to report on the events which have transpired since the Bus Act became effective on November 19, 1982; the changes which have occurred within the bus industry and the services it provides; and the problems which are apparent in the implementation of deregulation as envisioned by Congress.

We view oversight as an opportunity to eliminate misconceptions and more importantly to correct the misinformation disseminated in recent months concerning the implementation and impact of the Bus Act.

Additionally, we have included a critique of the S.1916 and HR 4067, identical bills introduced October 3, 1983, entitled "Bus Regulatory Reform Act Amendments of 1983." These amendments represent an effort to repeal major provisions of the Bus Act which liberalized regulation of entry, exit, and service changes. These bills would additionally emasculate critical portions of the preemptive language of the Bus Act, thus allowing state regulators to reimpose arbitrary and unreasonable regulation.

Lastly, we believe events of the past year confirm the expectations of Congress -- namely that deregulation will benefit consumers and carriers alike. The remaining regulatory schemes serve no useful public purpose. We support the end of federal and state economic regulation of the intercity bus industry.

THE BUS REGULATORY REFORM ACT OF 1982

Although the Bus Act is barely 11 months old we can already conclude that the baby is healthy and prospering. Of course like any infant it has some growing pains but these are to be expected in the finest of children. What is clear is that everything is going according to plan. The unexpected has not occurred and the prophets of gloom and doom have been shown to be wrong again.

Before analyzing the events of the past 11 months it is useful to reflect on the reasons the Bus Act came into being.

In the late 1970's regulation as we had known it for 40 years was changing. This caused many to reevaluate their positions on regulation.

In 1978 Greyhound engaged in an exhaustive review of the state of regulation, its impact on the company, and most importantly its impact on our ability to deliver a quality product at a fair price, to meet the needs of our customers, and to compete with the other modes providing intercity passenger service.

The inescapable conclusion was that absent a return to the meaningful regulation practiced as late as the 1960's, the complete elimination of all economic regulation, federal and state, was the answer. In summary we were led to this conclusion by the following factors:

1. Entry barriers especially at the ICC, had been removed, but restraints on exit and rates remained pervasive and rigid.

2. Rate regulation at the ICC was starving the industry of needed funds.

3. Rate regulation at the state level resulted in severely depressed intrastate fares and a resultant need for interstate customers to pay inflated fares.

4. State regulation of service forced us to operate routes and schedules for which there was no public demand or need.

5. Our competitors were deregulated while we faced the marketplace like a fighter entering the ring with one, often both, hands tied behind his back.

The latter is a particularly critical factor that is frequently overlooked. Federal policy and billions in user fees, including those paid by bus companies, built an Interstate Highway system which revolutionized intercity travel. Everyone could now use their auto for intercity travel and the bus share of the market fell from 4% in 1952 to 1.7% in 1982. And more immediately the deregulated airlines aggressively went after bus passenger with prices they openly promoted as "cheaper than bus" and rather explicitly advertised to divert bus passengers.

And where was the bus in the face of the changing competitive environment? We still had to frequently route our schedules over the "old road" and when we did use the Interstate Highways it was pursuant to what the ICC called Deviation Rules. The mere title "Deviation Rules" capsulizes the misdirection regulation followed. While the Interstate Highways became the mainstream of intercity travel, buses were only allowed to "deviate" onto them, thus perpetuating the idea that the basic service would be on the "old road." And once we "deviated" onto the Interstate Highway we couldn't serve intermediate points. Thus our route systems often were a creature of 1940 travel needs not the 1970's and 1980's.

No business can stand still and ignore population growth and shifts; new methods of delivering service; or the other myriad of changes our society has undergone since World War II, unless it wants to stagnate and inevitably decline. And this is exactly what was occurring to much of the bus industry.

I have emphasized this point because the private auto, with 84% of the intercity market, is our principal competitor. If you have any doubt, reflect upon Greyhound's use for over three decades of its advertising slogan "And leave the driving to us."

And in 1971 we were introduced to a new competitor called "Amtrak," that has been able to divert bus riders by charging the passenger only a small percentage of the cost of service. With Amtrak receiving over $5 billion in federal subsidies the U.S. taxpayer is paying an average of $35.00 for each Amtrak passenger.

The onset of airline deregulation compounded the competitive disadvantages visited upon the bus industry by government policy. While we had known since the 1960's that there were areas where we and the airlines competed, airline deregulation resulted in the eager pursuit of bus passengers by a number of fledgling as well as established airlines. The low cost airlines like People Express and Southwest undercut bus fares and advertised that fact. Our traffic statistics show that they were successful.

But while this was occurring regulation severely hampered our ability to react competitively. We were saddled with the expenses of unprofitable and unneeded services. We couldn't reroute service to use the fastest routes. We couldn't eliminate those numerous stops where a passenger was seldom seen but which made bus travel seem slow and antiquated to the 80% of our passengers who travel between urban areas. And most significantly we could not quickly react to air fares which undercut bus fares. One example should suffice. When Texas International advertised "cheaper than bus" in print ads showing their plane and our bus, it took us 65 days in the State of Texas to obtain approval to lower our fares to the same level.

Against this background it shouldn't be surprising that the bus industry supported deregulation in the form of the Bus Act.

The early months of deregulation have seen substantial activity in all of the major areas of bus service impacted by the Bus Act.

An analysis logically breaks down into Entry, Exit, Pricing, and State Regulation.

In addressing activity in the first two areas we have also noted instances of misinformation which detracts from an accurate understanding of the events of the past eleven months.

ENTRY

The most interesting aspect of entry has been the astonishing number of applications filed with the ICC for operating authority. Thru October 10, 1983, there have been 1931 applications. Of these 1706 are for charter and special operations authority, and with rare exceptions are nationwide in scope. And of these 942 or 55% are by persons or companies which did not previously hold ICC authority.

During the same period 225 applications were filed for regular-route authority. These applications represent collectively 46,686 miles of new routes. To place this in perspective, all ICC regular-route carriers had 272,000 miles of routes in 1981. Thus, in less than one year existing and new carriers have sought authority to expand the regular-route network by 17%.

Appendix A to my statement is an analysis Greyhound has prepared on a recurring basis of all regular-route applications, including their geographical scope and estimated route mileage. This analysis reflects that Trailways Inc., has been by far the most aggressive in seeking new route authority and restriction removal. Between November 19, 1982 and October 13, 1983, Trailways, Inc., has sought 9,351 miles of new routes and the Trailways system has sought a total of 17,238 miles. This compares to Greyhound's 5,327 miles. At the beginning of the period, the Trailways route network was 110,000 miles, while Greyhound's was 94,000 miles. Without considering discontinuances, Greyhound's route network shrank from 85% of Trailway's to 78%.

While Greyhound did not protest a single application of any carrier including Trailways Inc., the latter carrier protested every Greyhound route request it had any standing to protest.

The result has been that while Trailways is operating the authority it sought, Greyhound is still involved in costly proceedings before the ICC to obtain significant portions of the new routes for which it has sought authority.

What the record does convincingly show is that Trailways is intent upon foreclosing competition. It seeks to preclude competition with Greyhound by protesting every Greyhound application it has any standing to protest and by seeking a two-tier entry policy which would apply tougher entry tests for Greyhound applications than for those of all others including Trailways.

Trailways additionally forecloses competition from independent Trailways carriers through a recently enacted amendment to the by-laws of NTBS which limits the ability of one Trailways carrier to compete with another.

In point of fact, it is Trailways itself which has been the most aggressive in seeking, and obtaining, new route authority, and Greyhound certainly takes no issue with that. We have not protested one application.

The regular-route applications of all carriers are reflected in Appendices B, C and D (a limited number of these maps are available and are provided for the Committee's review).

Although some have suggested for their own self-serving reasons that only Greyhound is expanding its route network and that these requests are "massive" in scope, the unblemished record reflects an entirely different situation. Healthy competition is occurring; route structures are being adapted to the 1980's, and many new carriers are entering the bus industry.

EXIT

Discontinuances of service on routes and at points is probably the most misunderstood aspect of deregulation. This has been compounded by efforts to purposely mischaracterize the activities of carriers, particularly Greyhound.

It has been said that Greyhound is abandoning 1,300 communities. That is false. Requests were made in 42 states. Twenty-nine state regulatory agencies approved these requests as being in the public interest. In 13 states the decisions of the local regulatory authority were partially or totally unsatisfactory to Greyhound. In 12 we subsequently appealed to the ICC. In the six proceedings where the ICC has ruled on the merits it has granted Greyhound's request to discontinue service. At the present time, approximately 75% of the timetable deletions have been authorized. The status of Greyhound's discontinuance requests state-by-state is shown in the following table:

STATUS OF GREYHOUND DISCONTINUANCE REQUESTS

	Approved at State Level	Denied at State Level	Appealed to ICC	Granted By ICC
Alabama	X			
Alaska	NO OPERATIONS			
Arizona	DEREGULATED			
Arkansas	NONE FILED			
California		Dismissed	X	
Colorado	X			
Connecticut	X			
Delaware	X			
Florida	DEREGULATED			
Georgia	PENDING STATE DECISION			
Idaho	X			
Illinois	X			
Indiana	X			
Iowa	X			
Kansas		X	X	X
Kentucky	X			
Louisiana		X	X	X
Maine	X			
Maryland	X			
Massachusetts	X			
Michigan	X			
Minnesota		X	X	
Mississippi	X			
Missouri	X			
Montana	X			
Nebraska		X	X	X
Nevada	X			
New Hampshire	X			
New Jersey	NO INTRASTATE OPERATIONS			
New Mexico	X			
New York	X			
North Carolina	X			
North Dakota	X			
Ohio	X			
Oklahoma		X	X	X
Oregon		X	X	X
Pennsylvania		X	X	
Rhode Island	X			
South Carolina	X			
South Dakota	X			
Tennessee		X	X	
Texas		X	X	
Utah	X			
Vermont	NONE FILED			
Virginia	X			
Washington		X	X	
West Virginia		X	X	X
Wisconsin	DEREGULATED			
Wyoming		X		

It has also been said that Greyhound acted irresponsibly in seeking approval to discontinue unprofitable service. That too is false.

With the advent of the Bus Act, Greyhound proceeded expeditiously to modernize its route network. This included service additions as well as service discontinuances. With respect to the latter, Greyhound made appropriate applications and filings with each of the states that continue to regulate service. Our understanding is that many other carriers followed a similar plan and have discontinued unprofitable service. At the same time, carriers are stepping in to replace services discontinued by other carriers.

An example is Julesburg, Colorado, a town abandoned by Trailways (Appendix E). Subsequently Greyhound inaugurated twice daily service to Julesburg.

With respect to discontinuances several critical facts require emphasis.

First, no discontinuance can occur unless the state regulatory agency or the ICC determines it to be in the public interest. The Bus Act does not give carriers the unilateral power to discontinue service, although we understand Trailways abandoned Youngstown, Ohio and its route between Toledo and Ft. Wayne without state approval (Appendix F).

Second, at least as far as Greyhound is concerned, a proposal to discontinue is pursued only after analysis of the service and only in those cases where the losses are substantial and demonstrable.

Third, in most instances a point where service is proposed to be discontinued will continue to have service from another carrier or alternative Greyhound service within a few miles.

Fourth, in the case of Greyhound we filed our discontinuance proposals in each of the states at approximately the same time.

Fifth, in the case of Greyhound, and contrary to the assertions of some, the discontinuance proposals are not the first of several "waves." Greyhound's pending and accomplished proposals represent the discontinuances considered necessary to modernize our route structure. Any further discontinuance proposals would be the result of competition and market influences.

Lastly, the services proposed to be discontinued were the abysmal losers, the routes and schedules that were operated only because a regulator required their continuance (Appendix G).

The following are some examples of the 1982 operating results proposed to be discontinued:

STATE	REVENUE	VARIABLE COST	LOSS
Alabama	$170,645	$ 844,873	$ (674,228)
Georgia	148,416	1,937,646	(1,789,230)
Illinois	47,547	230,128	(182,554)
Indiana	56,550	391,230	(334,680)
Iowa	24,867	224,257	(199,390)
Kentucky	181,956	823,886	(641,930)
Louisiana	68,760	415,837	(347,077)
Nebraska	1,880	49,243	(47,363)
North Carolina	82,543	339,902	(256,759)
Tennessee	410,180	1,496,985	(1,086,805)
Virginia	12,179	86,754	(74,575)

If fully allocated costs were used in lieu of variable costs the losses reflected above would approximately double.

That discontinuance of bus service would occur under the Bus Act can surprise no one. The actions of state regulators in requiring the continuation of service operating at grotesque losses (revenue frequently less than 10% of the cost of the service) was well known. Repeated references are found in the testimony of industry and government witnesses before Committees of both Houses. The reports of both Houses on the Bus Act provide extensive and graphic evidence of the horrendous conditions imposed on bus operators by state regulators. Congress clearly intended that carriers be able to discontinue services for which there is no discernable public need.

The most startling aspect of criticism from one carrier and one association of carriers (principally tour and charter operators) of Greyhound for discontinuing service, is that each supported the discontinuance language in the Bus Act and, in fact, the President of the association prophesized exactly what has occurred and that in his opinion it should occur.

> "... discriminatory and arbitrary state regulation has devastated regular route bus service. States have forced bus operators to maintain financially unsound routes and schedules."

* * * * * * * *

> "The bus industry is losing millions of dollars each year from unprofitable operations that cannot be discontinued (because of state regulation). These losses are an economic drain on the carriers ...
>
> "The public interest, as distinguished from the parochial interest of a handful of passengers, is not served by requiring carriers to continue hopelessly unprofitable regular route service."
>
> Norman Sherlock. President, American Bus Association, Senate Surface Transportation Subcommittee, March 8, 1983. pp. 124, 139.

Misinformation of the type described is unfortunate because once published or broadcast it develops a life of its own. The correction or the effort to set the record straight never seems to catch up with the erroneous statement. This is because the media rarely provides equal access to correct the error and the proponent of a viewpoint is loath to discontinue the use of ammunition for his or her cause. Thus misinformation becomes part of the folklore of the issue. The type of misinformation we have described not only misleads people but it also casts the bus industry in an unfavorable light, something we would assume an industry association would be loath to do.

These observations are particularly pertinent in any evaluation of the impacts of bus deregulation. Much misinformation has resulted from (1) incomplete media research, (2) misunderstanding, (3) advocacy which colors perspective, and (4) carriers pursuing self-serving goals.

Examples of the fourth are described in proceeding pages. Examples of the first three are found in a Wall Street Journal article of August 2, 1982, which contained numerous inaccuracies, and the subsequent use of that misinformation by a committed opponent of all forms of transportation deregulation (Appendix H and I).

Other examples include:

- A press release by the Missouri Public Service Commission advising that Greyhound was proposing to discontinue a route when in fact it wasn't.

- Statements to the media by a senior executive of the California PUC that Greyhound's discontinuance request was the first of many, which was untrue, and that Greyhound would abandon 40% of its routes, when 1% is more accurate.

STATE REGULATION

State regulatory actions have generally been consistent with the intent and spirit of the Bus Act. The large majority of state regulators are to be commended for their fair and impartial compliance with the Bus Act, even though some of them in all probability are philosophically opposed to deregulation. Others of course are totally in agreement with the need to end economic regulation of the bus industry and have been supportive of the Bus Act and deregulation legislation in their respective states.

Unfortunately, a few state regulatory agencies have either refused to acknowledge the existence of the Bus Act or have engaged in punitive and procedural tactics designed to deny or delay carrier achievement of the freedoms contained in the Bus Act. While this attitude is confined to only a few states, the impact on carriers is substantial because it includes several large states which account for substantial bus operations.

A few examples suffice to show the problems carriers are confronted with.

- Texas. Greyhound sought authority to discontinue one back-road route and 46 off-route points, the majority of which generate no revenue Both on the record and by news release the Texas Railroad Commission has said it is considering revocation of Greyhound's statewide charter and package express authority because it chose to seek approval to discontinue a minute portion of its regular route operations.

- Georgia. Greyhound's otherwise justified rate increase application was denied because Greyhound has exercised its statutory rights under the Bus Act to reduce and discontinue service (Appendix J).

- Missouri has promulgated rules with respect to rate increases which require carriers to provide voluminous data, far more than was required before the Bus Act circumscribed the state agencies ratemaking role. Missouri additionally has sought to extend to 150 days from 120 days the period the Bus Act gives the states to act on rate increases.

- California provides a classic case study of regulators reaching a decision before the facts are developed and then refusing to change their decision when the facts show the decision is wrong.

In January 1983 Greyhound sought California PUC approval to discontinue service on several minor routes and at 97 (originally 99) points, representing less than 4/10ths of 1% of statewide revenue.

After Greyhound's application was filed, but before the evidentiary phase, the PUC undertook a wide ranging media campaign which grossly misrepresented both the application and Greyhound's future service plans in California. Commission representatives repeatedly led the public and public officials to believe that Greyhound was engaged in massive service reductions when in fact the reductions were minuscule and service for many would be improved.

The clear result of these efforts was to unduly concern the public; to inflame opinion against deregulation; and to create an atmosphere in which Greyhound could not receive a fair and impartial hearing before the PUC.

The PUC media campaign surfaced first, to our knowledge, on January 5, 1983, when the PUC staff was quoted in the San Francisco Examiner in part as follows:

> "Greyhound Bus Lines stands to collect 'a real windfall' in profits while 73 California communities will lose bus service and another 344 will have service reduced, says the staff of the State Public Utilities Commission.
>
> It's grim, and the people being hurt are the people who can least afford to deal with it,' said Victor Weisser, PUC Director of Transportation."

In the same article PUC staffer Ralph Douglas was quoted as saying that Greyhound lost money on 88% of its California routes and that Greyhound "is attempting to drop the money losers." This of course creates the clear impression for the reader that Greyhound has embarked upon discontinuing 88% of its routes. The use of buzz words like "windfall" clearly are designed to prejudge Greyhound's request even before the evidentiary stage.

On the same date the San Jose Mercury quoted a PUC executive as saying "the PUC vehemently opposes the move that completely halts service in some areas." It is interesting to note that this occurred before the PUC received any evidence from Greyhound.

In the same San Jose Mercury the PUC was quoted as saying that "half the communities that Greyhound proposes to abandon will be left without any transportation service." This is false. California DOT studies show that a substantial number of the points would continue to have intercity bus service.

Again in the San Jose Mercury PUC staff was quoted as saying that he "estimated that California would lose 38% of its intercity Greyhound bus service if the company follows through on its announced plan." The massive nature of that projection on its face is apparent. It was false and the PUC Staff was so advised. One percent was closer to the truth.

On January 13, 1983 PUC staff was quoted in the Bakersfield Californian as saying that the Greyhound abandonment application was "just the tip of the iceberg." Obviously he intended to convey a clear signal to the public that there would be many more Greyhound abandonment applications in the future.

The January 13, 1983 San Francisco Chronicle reads:

> "He (Weisser) predicted the 91 route California cutback proposal 'is just Greyhound's first shot, getting rid of the obvious losers. I am convinced we'll see one third of California's bus service go down the tubes, affecting every county,' Weisser said adding that he based his forecast on a two year Caltrans study that predicted 38% of the state's bus service might be lost under deregulation."

The Modesto Bee of January 8 quoted the PUC to the effect that persons in small communities depending on bus service could "kiss it off, it's not going to be there."

And in the January 8 San Jose Mercury, the PUC after expressing their views on Greyhound's application said that he believes there will be more cutbacks. In particular "I have every expectation they will follow up with abandonments that will affect other, larger areas of the state."

None of these predictions was based on any information provided by Greyhound, nor was any request directed to Greyhound to determine its plans.

And even after Greyhound personally advised the President of the PUC and PUC staff that it was not the "first wave," but the totality of Greyhound's intentions, the PUC continued to make the same prophesies.

Although this was bad enough, the PUC proceeded to "dismiss" Greyhound's application without ever addressing the merits. Greyhound has appealed that decision to the ICC, which as of October 19, 1983, has not acted.

Thus 10 months after filing a discontinuance request Greyhound has yet to receive a decision on the merits. If California receives ICC approval to dispose of applications by dismissal, it will be impossible for carriers to obtain decisions on the merits.

PRICING

The Bus Act contains several provisions relaxing federal and state regulation of rates and fares.

Those provisions designed to allow carriers to establish compensatory intrastate fares have been utilized by many carriers. Many states have cooperated in this endeavor to eventually bring intrastate fares to the interstate level. When states have ignored the Bus Act, appeals to the ICC have universally met with success when the decision is on the merits of the increase.

The Bus Act allows a carrier to lower intrastate fares without regulatory review or even the filing of a tariff. Greyhound has found this freedom useful. It allows instantaneous reactions to market and competitive conditions.

On an interstate basis Greyhound was the first carrier, in December 1982, to make a Zone of Rate Freedom (ZORF) filing. A few carriers followed suit but the percentage limits in the first year are limited. Substantial use of ZORF should follow in subsequent years as the ZORF percentages increase and then are totally eliminated.

The atmosphere created by the Bus Act has resulted in innovation and flexibility in pricing never seen before in the industry. Greyhound has looked upon deregulation as an opportunity to experiment and innovate and to establish new organizational formats for pricing decisions. The programs we have initiated have generally produced positive results.

As an example we have established what we call "two-tier" pricing on numerous routes. This can take several forms -- Fare differentials for express and local service; time of day pricing; and reductions limited to selected schedules.

Price competition within the intercity bus industry has been intense for several years but in the past year its intensity has grown. Two phenomena are apparent.

First, pricing freedom has not been accompanied by an equal amount of maturity as evidenced by the deep discount pricing program of Trailways. The pricing policy followed by that carrier has been a significant contributor to the poor financial performance of the bus industry in 1982 and 1983.

Second, Greyhound has experienced a situation where Trailways has sought regulatory intervention to force Greyhound to adopt Trailways' pricing policy; to deny Greyhound its statutory right to independent action; and to force Greyhound to price its service at unprofitable levels.

With respect to price discounting the often irrational deep discounting seen in the air wars has been repeated in the bus industry. These price cuts, principally Trailways initiated, are too deep, but nonetheless Greyhound has felt compelled to meet. If you reflect on the rules of successful discount pricing, you can see that these rules are being ignored by those initiating the fare cuts.

First, discount pricing should increase revenue. But the carrier reports filed with the ICC show this isn't happening.

Second, discount pricing should attract new customers and more trips by existing customers. This isn't happening either.

And lastly, discount pricing should increase profitability. This too, has not occurred.

We are seeing in the bus industry a major difference in pricing philosophies. Trailways has what we believe to be the mistaken conviction that short-haul fares should be increased and long haul fares decreased to compete with the airlines. Greyhound believes a contrary marketing approach is the only viable one. The bus industry must encourage, not discourage, short-haul travel (up to 500 miles) where the bus has advantages. Greyhound does not believe that bus can compete cost wise on long-haul trips with airlines. People will travel by bus for long trips, but for reasons other than price. Reducing long-haul prices, even if it produces additional traffic, will not result in profits. Greyhound does, however, believe in reasonable, well thought out discount programs. Greyhound's position in this regard is contained in a recent position paper presented at a bus industry rate meeting (Appendix K).

The second phenomenon is the recent attempt by Trailways to obtain an order from the ICC giving it the unilateral power to force Greyhound to carry passengers at lower than otherwise agreed upon reasonable joint fares and thereby reduce Greyhound's revenues. In the hands of Trailways and other low cost carriers, such power would be a weapon that would either prevent Greyhound from matching Trailways' discounted fares or force Greyhound to carry full fare passengers at discount rates at the option of its competitors, decimating its revenues and, because of its higher costs, injuring it severely.

If Trailways were awarded the requested relief the inevitable effect would be to force Greyhound to offer to Trailways the opportunity to join any promotion that Greyhound develops for its single-line rates.

A truly competitive system could not develop under Trailways' theory because Trailways would enjoy, in effect, control over Greyhound's promotions. Trailways would be able to join any Greyhound promotion it chose. Similarly, if Trailways offered a discount promotion which Greyhound decided it had to match, Trailways could force Greyhound into joining the promotion on Trailways' terms. This would tend to lock the two carriers into the same discount fare structure and to discourage competition in fares. Moreover, Greyhound would have little, if any, incentive to offer new promotions if it knew that every time it expended the time, effort and money to develop, promote, and advertise a promotional fare it would have to share the promotions with its chief bus competitor. This elimination of price competition which would result from Trailways' scheme would be detrimental to the public interest and directly contrary to the spirit and terms of the Bus Act.

Trailways' requested relief would not only impair price competition between the two carriers, it would also give Trailways unilateral power to impose lower revenues on Greyhound. For example, Greyhound filed its own $99/$150 discount fare tariffs subsequent to Trailways' filings in order to preserve Greyhound's competitive posture and goodwill and to offer to the public a distinct alternative to Trailways' promotions. If Trailways were able to force Greyhound to join its tariffs on Trailways' terms, the two carriers' promotions would be indistinguishable to the public and Greyhound's attempt to attract new customers through its own discount promotions would be frustrated. On the one hand, it would force Greyhound to share with Trailways the fruits of its efforts to develop new promotions. On the other, as a coerced party to Trailways' tariffs, Greyhound would be required to charge the discount fares to any passenger to whom Trailways sold tickets, and would be forced to extend these reduced rates beyond the operation of its own tariff. Because these reduced fares would not be compensated for by increased ridership, Greyhound would lose revenues. As Greyhound has relatively higher operating costs, coerced extension of discounts would, at the least, be relatively more harmful to it than to Trailways.

Basically, Trailways seeks to deprive Greyhound of its right to determine when, where, and to whom it will offer discount promotions adopted by Greyhound. But Greyhound can hope to maintain its competitive posture vis-a-vis Trailways' discount promotions only if it is permitted this freedom. Otherwise, by forcing Greyhound to interline at the discount fare, Trailways could superimpose on Greyhound's entire system a fare that Trailways has determined to be economical for Trailways based on its particular economic and business situation. Because Trailways' operating costs are lower than Greyhound's, the same discount fare would not necessarily be economical for Greyhound if imposed on Greyhound's system and would impose revenue losses on Greyhound and would place it at a competitive disadvantage.

This effect would also jeopardize the continuation of service to many small communities. Even at standard fares, revenues barely sustain Greyhound service to many of the small communities that other carriers do not currently serve. If Trailways could force Greyhound to charge uneconomical joint discount fares for travel to these communities the resulting unreasonable dilution of Greyhound's revenues might ultimately lead Greyhound to terminate service to such locations. Thus Trailways' scheme would harm rather than benefit small communities.

Greyhound believes in and is in favor of well-thought out discount programs. As it explained in Appendix K a successful discount program should attract new passengers and encourage existing passengers to increase their travel in sufficient numbers to offset revenues lost through lower passenger mile fares and to increase total carrier revenue and profits. Where airlines have achieved these goals, it has been because they have been able to make their discounts selective enough to draw new or additional traffic and have sufficient control of the scope and distribution of their discounts through reservation mechanisms, pre-payment plans and other restrictions. Buses do not currently have such tools; demand for bus service, especially long-haul, does not appear to be so pliable as to price in the range of foreseeable discounts; and discounts are quickly matched by airlines and other carriers. Thus, in Greyhound's judgment, many discount programs, including those promoted by Trailways, have frequently produced undesirably low fares, failed to attract new business and lowered rather than raised carrier revenues.

Greyhound has initiated discount programs only where they appear designed to overcome the many obstacles to success and are reasonably expected to increase revenues. Greyhound has also sought to meet a number of the discount programs of Trailways in order to maintain its reputation for good, economical service, but Greyhound often sees its revenues diminished by such discounts and does not wish to increase the harmful effects by unreasonable expansion of their scope. Greyhound and other carriers can only be hurt if discount fares are used without regard to the likelihood of their attracting new business and thereby become merely a less economical, less sound substitute for existing reasonable fares, including reasonable joint rates and fares. It is one thing for Trailways to pursue its own marketing strategies, it is another entirely for Trailways to enlist the ICC to assist to override the differing judgement of other carriers, including Greyhound, control competitors' prices and coerce them to share the costs of Trailways' policies. A viable bus industry requires that carriers have the free choice to limit their exposure to revenue losses from discount schemes of other carriers like Trailways, with which another carrier may disagree.

S.1916 and H.R. 4067 - BUS REGULATORY REFORM ACT AMENDMENTS OF 1983

On October 3, 1983, Senators Percy and Dixon introduced S. 1916, and Representative Simon introduced HR 4067, identical bills prepared by the Illinois Commerce Commission, which would rescind much of the regulatory modernization and competitive flexibility provided by the Bus Act.

The explanatory statements accompanying S.1916 speak almost exclusively of service reductions and discontinuances and in that regard S. 1916 would substantially dilute the realistic provisions of the Bus Act (references to S.1916 apply equally to HR 4067 since the bills are identical). But S.1916 goes further. It would critically restrict the relaxed entry standards of the Bus Act. In fact the proposal clearly envisions state regulatory veto power over ICC entry decisions. The proposed language would return entry regulation to the one carrier/one route, monopoly form of regulation previously practiced by many states.

S.1916 represents a clear effort to gut major provisions of the Bus Act. It would restrict flexibility and competition. It would resurrect exactly those exit and entry standards which hampered bus growth and contributed to a continuing decline in all measures of financial performance. And lastly, it would return to state regulators exactly those powers that Congress found were being abused and exercised in an arbitrary and unreasonable manner. The regulatory philosophy which underlies the proposals in S.1916 is the classical, but now discredited "the regulator knows best what customers want (or is it 'should want') and how carriers should operate."

A review of the provisions of S.1916 will show the degree to which it would substantially detract from the goals of the Bus Act as well as advancements in bus service which have occurred under the Bus Act.

S. 1916 Provisions Respecting Service Discontinuances

The provisions pertaining to service discontinuances are in two parts. First, a requirement for a new, costly, involved, and lengthy state process to be followed when a carrier desires to discontinue a route (the so-called Prior Notice Amendment). Second, a dramatic reduction in the evidentiary weight to be given the unprofitability of a route and an effort to hold the "last bus" on a route ad infinitum.

Prior Notice Amendment

This amendment would require each regular route bus operator to annually file a list of routes which are under consideration for discontinuance within the following twelve months. The list would be due on March 1 of each year. The list would be provided to the ICC and each state in which the carrier operates, including those states which on their own initiative have eliminated all regulation of bus service (Florida, Alaska, Arizona, Wisconsin, Michigan, Indiana, and Maine). In addition, the states would be required to give wide publicity to carrier filings. Carriers could amend the list on the first day of any month.

Not less than 30 days after the annual filing or the date of an amendment carriers would be required to simultaneously provide each state and the ICC with the following information for each such route:

(1) Number of passengers carried in prior 12 months
(2) Revenue for prior 12 months
(3) Other information a Commission might specify

Not less than 60 days, nor more than 90, thereafter a carrier could file a formal discontinuance application to the state regulatory agency.

Although the proposal may be well intentioned, it runs directly contrary to the stated purpose of the Bus Regulatory Reform Act:

> "... to reduce unnecessary and burdensome government regulation."

It would establish extensive new regulatory procedures of the exact nature which caused Congress to substantially deprive state regulatory agencies of jurisdiction in the Bus Act.

The proposal is directly contrary to the letter and spirit of the Bus Act. It would create costly and time consuming processes designed to reduce substantially the ability of carriers to eliminate unprofitable, poorly patronized routes.

The proposal is excessively "burdensome." It would require carriers to establish new and expensive internal reporting and accounting systems to retain information on a route specific basis, something only the smallest of carriers does today. It would be "burdensome" because it is certain that more current information, developed from a one-time study, would be required by the state regulatory agency at the time a specific application for discontinuance was filed. Thus, a later duplicative study would be required because the information in the annual list would be "stale, out-of-date, and incomplete."

It is "burdensome" because it requires massive studies and record keeping without an obvious public benefit or purpose. Despite a substantial reduction in regular-route bus service in the past 12 - 15 years (in the neighborhood of 15%), no state has ever followed this type of prior notice procedure. The states have clearly felt that existing regulatory procedures for evaluating service reduction proposals have been sufficient to ensure that the public is protected.

We would also be very concerned, based upon past experience with state and regional transportation planning agencies, that the information produced by carriers in this "burdensome" process would be used to justify additional subsidized public transit but not to assist private carriers.

Since only a very few states have indicated an interest in planning future intercity bus service it would be improper for the federal government to require the institution of a "burdensome" record keeping system designed for such nonexistent, unsought planning role.

Compounding the error of the proposal is the obvious fact that it would establish a totally unnecessary scheme of record keeping and regulation.

The Bus Act already encompasses a detailed, multi-step regulatory process for evaluating whether service discontinuance proposals are in the "public interest". It provides for state and ICC review and a timetable approaching one year for in-depth review of evidence and arguments. Other provisions of the Act allow for speedy entry of carriers desiring to replace a carrier discontinuing service.

The proposed annual list would add little of discernable value to Section 10935. On the other hand the negatives are numerous and substantial.

(1) It would establish an excessively burdensome record keeping requirement which would not replace the more current information regulatory authorities would require on a case-by-case basis.

(2) It would not address a felt public need or state demand.

(3) It would unnecessarily concern bus riders and communities that found their route on the list. This could result merely because carriers in the interest of caution would list more routes than they truly envision discontinuing. On the other hand, carriers might list no routes -- merely amending the list at the time they actually decide to file for discontinuance. Thus, whatever benefits are seen in the "list" procedure would be substantially reduced.

(4) The list could well produce the syndrome seen recently in the airline industry where customer fear of service disruption or discontinuance causes customer desertion to other services or modes.

The parallel requirement that railroads file a system map reflecting routes being considered for abandonment is advanced as a supporting precedent. However, this ignores the major differences in bus and rail service and their respective infrastructure. Bus service, in contrast to rail service, can be instituted within hours at little capital cost and with no need for extensive facilities. While the uniqueness of rail service may justify the "map" process, there is no discernable reason for applying the same scheme to intercity bus.

Let's also look at recent real world experience.

First, those elected officials closest to citizen concerns -- state legislators -- continue to vote, not for regulatory relaxation as found in the Bus Act, but for the end of all economic regulation of the intercity bus industry. This year -- 1983 -- Indiana and Maine joined, Florida (1980), Alaska (1980), Arizona (1982), Wisconsin (1982), Ohio (1982 - not total deregulation but more than is in the Bus Act) and Michigan (1982). Even Illinois is on the verge of enacting legislation which goes far beyond the Bus Act.

Second, experience under the Bus Act shows that carriers discontinue routes because no one or nearly no one is riding the bus. Some examples from Greyhound's experience are revealing. In Iowa the routes we discontinued with the blessing of the state regulatory agency averaged less than one effected passenger per schedule. Illinois authorized the discontinuance of five routes which lost an average 94¢ for each mile operated.

ROUTE	REVENUE PER MILE	VARIABLE COST PER MILE
B	$0.00	$1.10
C	.26	1.12
D	.49	1.14
F	.08	1.11
G	.07	1.11

Thirdly, and not surprisingly in view of the immediately preceding analysis, Greyhound has received only one subsidy proposal from local, county, region, or state authorities in the 42 states in which it filed discontinuance requests. The near total absence of such proposals is graphic evidence of the awareness of local authorities that there is absolutely no public need or interest in the continuation of these services.

Fourth, contrary to the explanatory statement accompanying S.1916, Greyhound has not filed petitions to abandon "1,300 communities." This statement is wrong and misleading in the following particulars:

- Greyhound has not filed to abandon 1,300 communities. Greyhound has requested regulatory approval to delete 1,114 points from our timetables.

- The 1,114 points are frequently highway stops, highway interchanges, or other points which have no population and thus aren't communities.

- The 1,114 points are generally within a few miles of a point Greyhound will continue to service or the point to be discontinued itself is serviced by another carrier.

- The 1,114 points include bus stops in cities which Greyhound will continue to serve from other locations in those cities.

- And of great importance is the fact that in 29 of the 42 states the state regulatory agency agreed that there was no discernable public need for the service and authorized the discontinuance. And in those appealed to the ICC, decisions on the merits have been exclusively in favor of allowing the discontinuance.

Fifthly, the assertion in the explanatory statement that "proponents argued that few abandonments would occur" is contrary to the forthright statements of industry witnesses. In fact the testimony of the President of the American Bus Association clearly prophesized a large number of discontinuances, explained the reasons why it would occur, and expressed his strongly held view that it should occur.

> "... discriminatory and arbitrary state regulation has devastated regular route bus service. States have forced bus operators to maintain financially unsound routes and schedules."
>
> *
>
> "The bus industry is losing millions of dollars each year from unprofitable operations that cannot be discontinued (because of state regulation). These losses are an economic drain on the carriers ...
>
> "The public interest, as distinguished from the parochial interest of a handful of passengers, is not serviced by requiring carriers to continue hopelessly unprofitable regular route service."
>
> Norman Sherlock. President, American Bus Association, Senate Surface Transportation Subcommittee, March 8, 1983. pp. 124, 139.

Sixth, rural bus service will not come to an end as the explanatory statement predicts. The best proof is in a review of carrier service offerings today. They continue to operate through and to serve rural America.

OTHER AMENDMENTS

S.1916 would effectively recreate the arbitrary and unreasonable state regulatory treatment of carrier discontinuance requests which caused Congress to enact Section 16 of the Bus Act.

In enacting Section 16 Congress recognized that State regulators frequently required carriers to operate routes at substantial losses. While this was justified as being a carrier's responsibility because on profitable routes it was protected against competition, the relaxed entry standards of the Bus Act mean the end of this relationship. Thus Section 16 instructs the ICC to "accord great weight" to evidence of unprofitable operations in reviewing carrier requests to discontinue routes. S.1916 would substitute "take into account" for "accord great weight" to evidence of unprofitability.

Section 16 of the Bus Act also instructs the ICC to consider "whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available." S.1916 would amend this instruction by requiring the ICC to give "great weight" to these factors.

The intent of these amendments is clearly to give state regulators the power to return to the arbitrary and unreasonable practices of the past. The amendments would sanction state decisions requiring that routes be operated for one passenger a day and that losses be incurred indefinitely on routes for which there is no public demand or need.

S.1916 PROVISIONS CONCERNING ENTRY

The Bus Act substantially liberalized the entry tests imposed by the ICC on requests to inaugurate bus service.

S.1916 would dramatically reverse that initiative by establishing a process whereby state regulators would be given virtual veto power over regular-route applications. S.1916 would require the ICC in considering regular route applications to:

> "accord great weight to the recommendations of each state in which the transportation to be authorized will be provided."

States today, and since 1935, have had the opportunity to participate as formal parties, on the record, in ICC application proceedings. This fact makes the language of the amendment curious at best. Not only is the specter of a state veto power created, but also the possibility that state "recommendations" will be off-the-record, ex parte views, which the other parties will be unaware of and unable to respond to.

S.1916 PROVISIONS CONCERNING SCHEDULE CHANGES

The Bus Act removes state regulatory jurisdiction over schedule changes unless the change results in less than one trip per day, except Saturdays and Sundays. S.1916 would increase this threshold to three trips per day.

The only justification offered is the conclusion in the explanatory statement that:

> "Under existing law, carriers can reduce service to one trip per day, perhaps scheduling trips at unreasonable hours that then justifies the termination of a particular route."

No evidence is offered that such has occurred. Again, it is the "regulator knows best" mentality. If the schedules are profitable why would a carrier purposely engage in scheduling practices which make the route unprofitable? Obviously it wouldn't, unless it desires to go out of business. And in that event no regulator can force it to remain in business.

On the other hand, if too many schedules are operated and the result is unprofitability, the carrier should have the freedom to reduce its losses. This is a freedom the Bus Act gave and S.1916 would take away.

S.1916 is an overreaction to a misunderstood situation. Discontinuances of unused, unprofitable bus services have occurred for years, but under trying, costly circumstances. The Bus Act provided the mechanism to allow discontinuance decisions to be made based upon realistic economic considerations. Those which have occurred under the Bus Act are not the "first wave" and they have not harmed bus travellers.

The proposed amendments are aimed at a problem which doesn't exist. And since it doesn't exist S.1916 would not solve it. But S.1916 would grievously harm many of the major achievements of the Bus Act.

A LEGISLATIVE PROPOSAL FOR THE FUTURE

After one year it is clear that the substantial reduction in regulation resulting from the Bus Act has been successful.

Carriers and their customers have benefited. More carriers are in business today. Numerous carriers have expanded their service offerings, both regular route and charter. Prices are more attuned to costs, markets, and competition. Unused services which weakened carriers are being eliminated.

Nothing unexpected has happened. The prophesies of the authors and proponents of the Bus Act were correct.

The Bus Act was a crucial first step in acclimating the bus industry to marketplace competition. It has shown that gloom and doom forecasters, those who feared the unknown, were wrong.

The crucial question now is whether the remaining regulatory powers of the ICC and the state regulators serve any legitimate public interest.

Those remaining regulatory powers, whether over entry, exit, or rates, are basically paper-producing, make-work exercises.

Entry is virtually unrestricted, but an applicant must still negotiate a paperwork hurdle. And in Greyhound's case, because of Trailways' continuation of a policy of protesting every Greyhound application touching a Trailways' route, a year or more of exceedingly costly administrative process.

Exit from unprofitable routes is virtually assured, but a recalcitrant state and subsequent ICC review can consume nine months to a year.

Rate changes are also virtually assured. The ICC has effectively withdrawn from second guessing carriers on the propriety of rate increases and decreases. But it can still take months to accumulate and file the necessary paperwork. Intrastate rate increases first go to the states which have 120 days to act. If appealed to the ICC that agency has 60 days to act. In total, an effort to correct depressed intrastate fares or to merely apply to intrastate rates the same general increase last applied to interstate rates can take 180 days and even more when time is allocated to the preparation of information required by the regulatory agencies.

What public interest is served by maintaining a system of paperwork mazes, large bureaucracies, and lengthy timetables with expensive legal proceedings, when the outcome can be predicted with virtual certainty? A carrier knows the outcome will be a new operating authority, permission to discontinue a route, or a rate increase. Thus, what purpose is served in producing reams of paper, hiring accountants, paying legal bills, and attending hearings? Today we have all of the trappings of judicial proceedings when mere ministerial actions are involved.

Total deregulation is the answer. ICC regulation of the intercity bus industry should be terminated and state regulation precluded through preemption. This would put the bus industry on a par with its competitors -- airlines, autos and Amtrak.

The "sunset" of regulation would eliminate those vestiges of regulation which remain with us and which hinder a complete adjustment to the marketplace.

"Sunset" would also clearly signal that there will be no turning back, such as envisioned by S.1916, The Bus Regulatory Reform Act Amendments of 1983. It would end the present situation which finds carriers half regulated and half free, regulated in some states as if nothing has changed and freed of all regulation in other states.

Greyhound first supported total economic deregulation in early 1979. At that time we disseminated a white paper detailing our position and the reasons for it (Appendix L). While some of the problems addressed in that White Paper have been remedied by the Bus Act, particularly through the ICC's clear support of the intent and spirit of Congress, much of the analysis and the conclusions remain valid today.

Only a few short years ago the intercity bus industry was the stepchild of government policy. Little was known about the industry and in-depth studies of its problems and needs were few in number. This is no longer true. The debate over bus deregulation during the past four years has produced an awakening of interest. Numerous studies and analysis have been performed within and without government. And in virtually every instance, whether federal or state, public or private, the conclusion has been that continued economic regulation of the intercity bus industry serves no useful public purpose.

One of the best of these studies, which specifically addresses the public policy issues, is Deregulation of the Intercity Bus Industry by the Management Analysis Center and Professor Gayton Germane of Stanford University (Appendix M). It provides the critical analysis which supports the total elimination of ICC and state regulation of the intercity bus industry.

In May of 1983 an in-depth economic analysis of the bus industry, deregulation, the competitive marketplace, and early activities under the Bus Act was prepared by John Eichner of Simat, Helliesen, and Eichner Inc., a transportation economic research firm. Although prepared for Greyhound in conjunction with an ICC proceeding, it offers the best current analysis available (a copy is available for the Committee).

In conclusion, now is the time to begin the necessary steps to eliminate unnecessary economic regulation and allow intercity bus companies to compete on an equal basis with airlines, autos, and rail.

Safety regulation should be continued and in fact we support substantial enhancement of safety programs.

CONCLUSION

In general the Bus Act has been a success. The only apparent problems are (1) the refusal of some carriers to cease their efforts to obtain one regulatory scheme for themselves and one for Greyhound and (2) the efforts of a few state regulatory agencies to impede implementation of the Bus Act.

In the short term the ICC has the power to quickly cure the first by authoritative decisions placing those carriers on notice that their use of the administrative process to deny Greyhound, or any carrier, the benefits and protections of the Bus Act will not be permitted.

The ICC also has the power to substantially correct the problems created by punitive state action.

In the long term the answer is clearly the end of all federal and state economic regulation of the intercity bus industry.

Thank you again Mr. Chairman for this opportunity to comment on the first year under the Bus Regulatory Reform Act of 1982.

Printed in U.S.A.

APPENDIX A

GREYHOUND inter-office correspondence

TO Distribution	FROM W. L. McCracken Greyhound Lines, Inc. Phoenix, AZ

THIS IS IN REPLY TO YOUR LETTER DATED:	FILE NO.	DATE	FILE NO.
		October 19, 1983	

SUBJECT: **Regular Route Application Filings #9**

Distribution:

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Attached are lists of regular-route applications filed with the ICC under the Bus Act separated into four groups: Greyhound, Trailways, Inc.; Other National Trailways Bus System members (NTBS); and Other Carriers. New entries are 10 under Greyhound; 33 under Trailways; 35-36 under "NTBS"; and 130 and 134-141 under "Other". PLEASE NOTE PAGE NUMBERS ON LISTS. These replace pages distributed with memo #8.

This has been compiled from the I.C.C. Register through October 10, 1983. In total 1,931 applications have been filed.

Regular Route Applications	Applications	Route Miles
Greyhound	13	5,327
Trailways, Inc.	33	9,351
Other National Trailways Bus System	36	7,887
Other Carriers	143	24,121
TOTAL	225	46,686

Charter Applications	
By Existing ICC Certificated Carriers	764
By First Time Applicants	942
TOTAL	1,706

It has been alleged by Trailways that the vast majority of the regular-route applications are not intercity in nature, but actually New York commuter, Atlantic City, and airport service.

This is not accurate. Review of the applications as published in the *Federal Register* shows that 87% of the route miles are clearly intercity. And the remainder may well be intercity as well as serving another function such as serving an airport, commuters, or Atlantic City.

Nature of Regular Route Service

	Number of Applications	Route Miles	Route Miles as Percent of Total
Intercity	160	40,611	87.00%
Atlantic City	20	3,627	7.78%
Commuter	29	1,246	2.67%
Airport	16	1,202	2.58%
	225	46,686	100%

Even if you look only at the applications filed by non-Greyhound, non-Trailways, and non-NTBS carriers you find that at least 75% of the route miles and 54% of the applications are truly intercity. Route miles are the best measure since an applicant can arbitrarily combine many routes in one application or separate them into multi-applications.

Greyhound's filing of May 13, 1983 with the ICC contains accumulated mileages which are less than those in this memo. The May 13 mileages reflect ICC filings through April 20, 1983, while this memo incorporates filings through October 10, 1983. Additionally, this memo includes mileages for a number of operations omitted from the earlier totals.

For comparison purposes:

	ICC Filing Through 4/20/83	Memo #9 Through 10/10/83
Greyhound	5,160 miles	5,327 miles
Trailways, Inc.	5,996 miles	9,351 miles
NTBS (excluding TWI)	4,222 miles	7,887 miles
Total NTBS (including TWI)	10,218 miles	17,238 miles
Other Carriers	11,151 miles	24,121 miles
TOTAL INDUSTRY	26,529 miles	46,686 miles

As recently as 1981 ABA estimated that ICC carriers provided service on 272,000 miles of highway (including duplication).

This would indicate that in the first nine and one-half months under the Bus Act that certificated route miles have increased by 17% (46,686 divided by 272,000).

For purposes of comparison we have set forth, on an annual basis, the number of ICC applications during the past five years.

	Regular Route						Charter		
	Gryhnd	Trwys Inc.	Other NTBS	Other	1st Time Appl	Total Reg. Route	Existing Certif. Carrier	1st Time Appl	Total Chrtr
1978	10	7	4	19	4	44	107	49	156
1979	6	0	4	16	2	28	66	31	97
1980	13	2	17	49	5	86	236	85	321
1981	9	13	7	36	5	70	222	208	430
1982*	10	7	10	39	8	74	146	246	392

*11 months

(Regular Route)
(Average 60 Per Year)

(Charter Average)
(279 Per Year)

We will update the application list as appropriate.

W. L. McCracken

WLM/smm
Attachment

All routes are interstate and intrastate. Restriction removal or open door are shown with "#". Redescriptions are not included.

GREYHOUND LINES, INC.

Federal Register Publication Date	Principal Termini and Routes	Estimated Route Miles
1. 12-29-82	Allen - London, Kentucky	139
	#Indianapolis - Ohio Line at Harrison	80
	Bonaire-Hawkensville, GA	24
	Fitzgerald - Douglas, GA	24
	Statesboro - GA 16 & I-16, GA	12
	LaGrange - Columbus, GA	43
2. 01-06-83	#Paris - Evansville, IN	113
	#New York City - Connecticut Line (Milford)	30
	#New York City - Port Chester	30
	#Long Island	62
	#Long Island	52
	#Denver - Fort Collins, CO	62
	#Norfolk - VA/MD Line via 13	99
	#Through Idaho via I-90	55
	#Denver - Nebraska	186
	#Laurel - Baltimore, MD	15
	#Easton - Allentown, PA	19
	#Alliance - Massillon, OH	37
	#Philadelphia - Doyleston, PA	31
	#New Jersey Turnpike - New York City	85
3. 01-20-83	#Texarkana - Memphis	323
4. 02-10-83	Longview, WA - OR/WA State Line	3
	Florence - Eugene, OR	59
	Jct. US 26 & OR 47 - Jct. OR 47 & 8	10
	OR/WA Line - Ranier, OR	2
	Bonsall, CA - Jct. - CA 76 & I-15	5
	Vista, CA - I-5	6
	Dayton, TX - Baytown	16
	San Antonio - Corpus Christi	153
	#Santa Monica - Claremont via I-40	50
	#Salt Lake City - Ogden via I-15	34
	#Denver - Walsenburg	161
	#Oklahoma City - Ardmore	97
	#Ft. Worth - Dallas	28
	#Oklahoma Line - Denton	39
	#Denton - Dallas	42
	#Through Connecticut via I-84/86	59
	#Through Massachusetts via I-95	51
	#Boston - New York Line via I-90	90
	#Through Part of Massachusetts via I-90 US 20	11
	#Through Maryland via US 13	41

All routes are interstate and intrastate. Restriction removal or open door are shown with "#". Redescriptions are not included.

GREYHOUND LINES, INC., CONTINUED

Federal Register Publication Date	Principal Termini and Routes	Estimated Route Miles
5. 02-08-83	Knoxville - Bean Station, KY via US 11E	50
	Lynchburg - Washington, DC	178
	Shelbyville - Tullahoma, TN	16
	Richmond - Staunton, VA	103
	#Crossville - Nashville, KY	112
	#Knoxville - Chattanooga, KY	111
	#Norfolk - Suffolk, VA	20
6. 02-10-83	Eutaw - Demopolis, GA	24
	Jasper - Haleyville, AL	38
	Green Hills, AL - Florence	17
	Anniston - Athens, GA	120
	Decatur, AL - Murfreesboro	112
	#Jackson, MS - Memphis	213
	Lillington - Ft. Bragg, NC	18
	Rocky Mount - Asheville, NC	178
	Raleigh - Dunn, NC	36
	Greensboro - Charlotte	89
	Florence - Conway, SC	54
	#Jackson - Memphis	213
	#Petersburg - Savannah (Florence)	265
	#Rocky Mount - Goldsboro, NC	44
	#Wilson - Jct. I-95 & US 301, NC	16
	#Rocky Mount - Asheville (Greensboro Durham)	54
7. 02-14-83	Tekomsha - Coldwater, Michigan	23
	Three Rivers - Jct. US-131 & MI/IN Line	31
	Detroit - Ann Arbor via MI 14	38
	Escanaba - Menominee, Michigan	56
	Midland - Clare via Mt. Pleasant, Michigan	40
	Tama - Grennell, Iowa	25
	Lake Geneva - Jct. I-94/WI 50	15
	Stevens Point - Wisconsin Rapids, Wisconsin	21
	Sauk Center - Willmar, Minnesota	45
	Duluth - Hibbing, Minnesota	78
	#Chicago - Wisconsin Line via I-94	63
	#East St. Louis - Indiana Line via I-70	156
8. 02-23-83	Stroudsburg - Easton, Pennsylvania	32
	York - Gettysburg via Hanover, Pennsylvania	25
	Utica - Hamilton, New York	33
	Ithaca - Owego, New York	29
	Utica - Pulaski, New York	55
	Harrisburg - Lancaster, Pennsylvania	35
9. 02-14-83	West Yellowstone - Bozeman, Montana	90
10. 09-15-83	Hammond, IN - Terre Haute, IN via US 41, IN 63	167

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

TRAILWAYS, INC. AND SUBS

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
1. 12-20-82 1*	New England	Boston - Lewiston, MA	160
2. 12-22-82 1*	Tamiami	Savannah, GA - Jacksonville, FL	154
3. 12-22-82 3*	Tennessee	Bristol, TN - Roanoke, VA	151
4. 12-22-82 1*	Tennessee	Dalton - Marietta, GA; Birmingham - Gadsden, AL; Louisville, KY - Nashville, TN	294
5. 12-23-82 1*	Southern	Houston, TX - Baton Rouge, LA	275
6. 12-23-82 3*	American	PA to CA; MO-OK - OK-TX; San Diego - Los Angeles; Baltimore - Pittsburg	2,156
7. 12-23-82 3*	Southern	Gulfport - Biloxi, Mississippi	12
8. 12-27-82 1*	Trailways Bus System	San Marcos - San Antonio, Texas	42
9. 12-29-82 3*	Southeastern	Atlanta, GA - Greenville, SC	81
10. 12-29-82 2*	American	Cleveland - Cincinnati; Toledo - Cincinnati; Other Ohio routes	498
11. 12-30-82 3*	Trailways, Inc.	Chicago - Cameron, MO; Los Angeles - San Fernando; Hayward - San Francisco; Vancouver, WA - Seattle, WA	311
12. 01-05-83 1*	Trailways, Inc.	Greenville, TX - Texarkana, AR	128
13. 01-05-83 4*	Trailways, Inc.	Dewey, AZ - I-17 and AZ 169	16
14. 01-06-83 3*	Virginia Stages	Washington, DC - Richmond, VA; Waynesboro - Roanoke; I-64 & 81 - Staunton, VA	194
15. 03-15-83 1*	Trailways Southern Lines	New Orleans - Jackson, MS	206
16. 03-23-83 2*	Trailways Southeastern Lines	Knoxville - Greensboro via I-40	67
17. 03-24-83 3*	American (Republished 6-30-83)	(1) Dallas - Ft. Worth via I-30; (2) Davenport, IA - Hastings, NE; (3) I-80 at Jct. US 34/281 - Grand Island, NE	432
18. 03-28-83 1*	Midwest Bus Lines	Kansas City, KS - St. Louis, MO via I-70	257
19. 03-29-83 2*	Trailways Texas	San Antonio - Del Rio intermediate points	117

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

TRAILWAYS, INC. AND SUBS, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
20. 03-29-83 1*	Trailways, Inc.	(1) Cairo, IL - Chicago via I-57 (new route Cairo - Gilman) (2) Dallas - Ft. Worth eliminate local traffic restriction (3) Kansas City - Denver over I-70 (new route Salina, KS - Limon, CO)	644
21. 04-13-83 3*	Trailways Texas	San Antonio - Del Rio intrastate (3-29-83 interstate intermediate point authority sought)	--
22. 06-13-83 3*	Trailways Southern Lines	Intrastate service at all intermediate points between St. Louis and Memphis on I-55	299
23. 06-20-83 3*	Virginia Stages	Authorize service at all intermediate points (1) Washington,DC - Richmond; (2) Waynesboro - Roanoke; (3) Richmond - Staunton (see no.14 for intrastate request on parts 1 & 2)	--
24. 06-22-83 1*	Trailways Bus System, Inc.	Dallas - Ft. Worth via I-30	28
25. 06-27-83 2*	Virginia Stages	Washington, DC - Centrevilla, VA via I-66	25
26. 08-15-83 1*	Midwest Buslines	(1) Springfield, MO - Conway, AR via US 65 (2) Texarkana, TX - Linden, TX via US 59 (3) Marshall, TX - Henderson, TX via US 80 & 259	273
27. 08-16-83 3*	Trailways Southeastern	Intrastate between Jacksonville NC & Camp Lejeune	10
28. 08-22-83 1*	Trailways Texas	San Antonio - Laredo via I-35	150
29. 08-29-83 3*	Safeway Trails	(1) intrastate between Reading & Lancaster, PA (2) intrastate between Lancaster & PA/MD Line (3) intrastate between Baltimore & PA/MD Line	110

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

TRAILWAYS, INC. AND SUBS, CONTINUED

Federal Register Publication Date (*See above explanation)		Name of Carrier	Principal Termini and Routes	Estimated Route Miles
30. 08-30-83	1*	American Bus Lines	Various redescriptions, certification of deviations, & new routes. The new routes include (1) San Francisco - San Jose - Cordelia (2) San Diego - Riverside via I-15 (3) Oceanside - I-15 (4) Brawley - Coachella, CA via CA 86 (5) Baltimore - Hagerstown - Bedford, PA via I-70	1,090
31. 08-30-83	1*	Trailways, Inc.	Various redescriptions, certification of deviations & new routes. New routes include (1) San Francisco - San Jose - Jct. I-580 & I-680 (2) Sacramento - Red Bluff via CA 99	603
32. 08-30-83	1*	Trailways Southern Lines	Redescriptions & certification of deviations in Missouri & Illinois	197
33. 09-20-83	1*	Trailways Inc.	(1) Livermore via I-580 and I-5 to CA 99 south of Bakersfield (2) Oakland via CA 17 to San Jose then via US 101 to Gilroy thence CA 152 to CA 99	371

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

NATIONAL TRAILWAYS BUS SYSTEM

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
1. 12-18-82 1*	Arrow Trailways of Texas	Austin - Houston, TX via US 290	164
2. 12-20-82 1*	Fullington Auto Bus	Du Bois, PA - Cleveland, OH	199
3. 12-20-82 2*	Trans State Bus	Liberal, KS - McCook, NE via US 83	238
4. 12-29-82 4*	Wisc. Mich. Coaches	Duluth, MN - Abbottsford, WI via US 2 and WIS 13	202
5. 01-05-83 1*	Trans State Bus	(1) Manhattan, KS - Junction US 77 & KS 150 (2) Junction City, KS - Junction I-135 & US 56 (3) Hillsboro, KS - Junction US 50 & I-135	198
6. 01-05-83 2*	Trans State Bus	Dalhart, TX - Liberal, KS via US 54	112
7. 01-14-83 1*	Michigan Trailways	Flint - Detroit	57
8. 01-18-83 1*	Southeastern Trailways	(1) Chicago - Louisville via I-90, 94 & 65 (2) Indianapolis - Cincinnati via I-74 (3) Cincinnati - Knoxville via I-75 (4) Cincinnati - Louisville via I-71 (5) Louisville - Lexington via I-64 (6) Ft. Wayne - Indianapolis via I-69.	500
9. 01-21-83 1*	Burlington Trailways	(1) Davenport, IA - Junction I-80 & Iowa 38 (2) Cedar Rapids - Iowa City via I-380 (3) St. Louis - Wentzville, MO via I-70	100
10. 01-26-83 2*	Carolina Coach	Washington, DC - Annapolis, MD via U.S. 50	32
11. 01-26-83 3*	Frank Martz	Various NJ - NY City routes	--
12. 01-31-83 1*	Fullington Auto Bus	Williamsport, PA - State College	87
13. 01-31-83 1*	Blue Ridge Lines	(1) Greenville, SC - Augusta, GA - Brunswick, GA (US 25) - Jacksonville, FL (I-95); (2) Greenville - Atlanta; (3) Atlanta - Augusta; (4) Greenville - Columbia - Myrtle Beach; (5) minor routes in VA, TN, & NC; (6) Charlotte, NC - Augusta, GA	1,795

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

NATIONAL TRAILWAYS BUS SYSTEM, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
14. 02-09-83 3*	Scenic Trails Inc.	Intrastate rights on regular routes in WI, IA, IL & MN	86
15. 02-18-83 3*	Pacific N.W. Bus Company	Interstate all intermediate points Seattle - Blaine POE	108
16. 03-02-83 1*	Adirondack Transit	(1) Rouses Point POE NY/Canada - Plattsburg (2) various minor redescriptions	89
17. 03-03-83 1*	Empire Trailways	(1) Niagara Falls POE - Buffalo via I-90; (2) Syracuse - Erie via I-690, 90, & 79 serving Rochester; (3) Cleveland-Erie, PA	216
18. 03-03-83 1*	Pine Hill - Kingston Bus	(1) Rome - Utica (2) various route redescriptions	18
19. 03-30-83 1*	Service Coach	Savannah, GA - Jacksonville, FL via I-16 & 95	154
20. 03-31-83 1*	Carolina Coach	(1) Norfolk - Williamsburg via I-64; (2) Raleigh - Jct U.S. 1 & I-85; (3) Durham, NC - Petersburg, VA via I-85; (4) Greensboro, NC - Danville, VA via U.S. 29; (5) Charlotte - Raleigh via U.S. 64 & N.C. 49; (6) Wilson, NC - Rocky Mount via U.S. 301; (7) Greensboro - Charlotte via I-85	422
21. 04-26-83 1*	Fullington Auto Bus	Lewiston, PA - Harrisburg via US 22 & 322.	63
22. 04-29-83 1*	Seashore Transportation Company	(1) Charleston, SC - Wilmington, NC via US 17, (2) Wilmington - Goldsboro via US 117, (3) Goldsboro - Raleigh via US 70.	258
23. 05-05-83	Michigan Trailways	Acquisition of White Pine Transit Company. Routes are (1) Iron Belt, WI - White Pine, MI (2) Mercer, WI - Wakefield, MI (3) Ashland, WI - Ironwood, MI. Acquisition completed 4-21-82, authority only now being sought.	--

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

NATIONAL TRAILWAYS BUS SYSTEM, CONTINUED

Federal Register Publication Date (*See above explanation)		Name of Carrier	Principal Termini and Routes	Estimated Route Miles
24. 05-06-83	1*	White Pine (owned by Michigan Trwys see #23)	(1) Ashland, WI - Calumet, MI - Marquette, MI (2) Calumet - Houghton, MI (3) Ontonagon, MI - Baraga, MI (4) Palmer, MI - US 41 via MI 35	341
25. 05-26-83	1*	Ramsey's Trailways	Monroe, LA - Lake Providence, LA via US 165, LA 2 & US 65	67
26. 06-22-83	1*	Susquehanna Trailways	Williamsport, PA & New York City (1) via I-80, 280, 95, & 495 and (2) via Danville, Hazelton, Easton, PA and Somerville, NY	416
27. 06-23-83	1*	Capitol Bus (Pennsylvania)	(1) Carlisle, PA via I-76 to junction US 222 south of Reading (2) Carlisle - Camp Hill via US 11 (3) Millersburg & Harrisburg (4) Newport - Harrisburg	135
28. 07-11-83	1*	Deluxe Trailways	Kanakee, IL - St. Louis, MO via I-57, 72, & 55 serving off-route points of Rantoul, Champaign, Urbana, Decatur, Springfield, & Litchfield, IL.	247
29. 07-11-83	1*	American Trailways of Georgia	(1) Atlanta, GA - Carrollton, GA (2) Atlanta, GA - Asheville, NC (routes already operated)	--
30. 07-28-83		Frank Martz Trailways	Acquisition of Gulf Coast Motor Lines (St. Petersburg, FL). Routes are (1) St. Petersburg - Clearwater - Tallahassee; (2) Clearwater - Orlando; (3) Clearwater - Tampa.	--
31. 08-16-83	4*	Tri-State Trailways	(1) Memphis, TN - Tupelo, MS via I-55 & Miss.6; (2) Tupelo - Columbus, MS via US 45; (3) US 45 & 45 A (Shannon, MS) - Columbus via US 45A & US 82; (4) Nettleton, MS - Aberdeen via Miss.6, Miss.25, Miss.8, & US 45; (5) Aberdeen & Miss.25 & US 45A via Miss.25.	289
32. 08-22-83	1*	Trans State Bus	Various Kansas Routes & McCook - North Platt, Nebraska	888
33. 09-08-83	1*	Carolina Coach	Greensboro - Winston-Salem	27
34. 09-09-83	1*	Adirondack Transit	Watertown - Rome, NY	80
35. 09-12-83	1*	Service Coach	Jesup, GA - Brunswick, GA via US 25/341	34
36. 09-13-83	1*	Michigan Trailways	Detroit - Chicago via I-94	266

The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

OTHER CARRIERS

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
1. 12-15-82 3*	Valley Transit	Harlingen - San Antonio - Houston (mileage includes #24)	657
2. 12-16-82 2*	NY-Keansburg-Long Branch Bus	New York City - Atlantic City	130
3. 12-20-82 3*	Carl Bieber	Reading, PA - NY City; Kutztown - Allentown	116
4. 12-20-82 3*	Caravan Coach	New Jersey points - NY City	--
5. 12-21-82 2*	Caravan Coach	Newark Airport - NY City	10
6. 12-21-82 3*	Vermont Transit	Vermont - Mass. - New York	--
7. 12-21-82 3*	Trans-Bridge Lines	PA - NJ - NY City	111
8. 12-21-82 3*	Nodak Stages	Haque, ND - U.S. 83 & N.D. 11	4
9. 12-21-82 3*	El Paso - LA Limo	El Paso - L.A.	823
10. 12-22-82 1* 03-30-83 1*	Illini - Swallow	Peoria, IL - Davenport, IA	97
11. 12-28-82 3*	Hudson Transit Lines	Poughkeeepsie, NY - Fishkill, NY	13
12. 12-29-82 4*	Hampton Jitney	Montauk, NY - New York City	122
13. 12-29-82 2*	Mt. Kisco Bus Lines	Baldwin Place - White Plains, NY Lewisboro, NY - New York City	72
14. 01-03-83 1*	Olympia Trails	NY City - Atlantic City, NJ	130
15. 01-04-83 2*	Winston Airport	Montauk, NY - Newark Airport See #130	136
16. 01-12-83 2*	Bonanza	Pittsfield, MA - New York City	121
17. 01-14-83 2*	Caravan Coach	Ogdensburg, NJ - New York City - Various NJ routes	100
18. 01-17-83 1*	Jack Rabbit Lines	Sioux Falls, SD - Mankato, MN; Sioux City, IA - Worthington, MN	244
19. 01-18-83 1*	Latin Express	Miami - New York City	1,334
20. 01-18-83 1*	Frontier Stages	Casper - Gillette, Wyoming	131
21. 01-18-83 1*	Texas Bus Lines	Laredo - San Antonio - Houston - Dallas	865
22. 01-19-83 2*	Leprechaun Lines	Fishkill - Arlington, NY	15
23. 01-19-83 2*	Winston Limousine	Milford, CT - LaGuardia & JFK Airports - New York City	62
24. 01-19-83 3*	Valley Transit	Various Texas Routes (mileage included in #1)	--

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

OTHER CARRIERS, CONTINUED

Federal Register Publication Date (*See above explanation)		Name of Carrier	Principal Termini and Routes	Estimated Route Miles
25. 01-20-83	2*	Tower Bus	Mt. Clemens - Lansing; Mt. Clemens - Ann Arbor; Detroit - Pt. Huron; Dearborn - Frankenmuth; Pt. Huron - Detroit	155
26. 01-21-83	1*	Fun Bus Systems	Tijuana - San Diego - Los Angeles - Las Vegas - San Francisco	1,450
27. 01-26-83	1*	AAA Pickup & Delivery	Birmingham, AL - Iuka, MS	130
28. 02-02-83	3*	NY-Keansburg-Long Branch	New Jersey - Staten Island - New York City	45
29. 02-08-83	2*	Cobra Coach	Bronx, NY - Atlantic City	135
30. 02-09-83	3*	Bonanza Bus	RI - MA - CT - NY various routes	--
31. 02-15-83	2*	Pocono Trails	Port Jervis, NY - Atlantic City	165
32. 02-15-83	2*	Wisc. - Ill. Stages	Madison, WI - Chicago; Lake Geneva area routes in Wisconsin	150
33. 02-22-83	2*	Westours Motor Coach	Skagway, AK - U.S./Canada POE	10
34. 02-24-83	4*	Gregg Bus Service	Newark, DE - Philadelphia	42
35. 02-28-83	2*	NY-Keansburg-Long Branch	Ridgefield, NJ - New York City	9
36. 02-28-83	4*	NY-Keansburg-Long Branch	Freehold, NJ - New York City (Republished 07-20-83)	45
37. 03-02-83	2*	Vanguard Interstate Tours	N. Salem, NY - New York City	40
38. 03-03-83	2*	Northumberland Lines	Mankato - Rochester, MN	116
39. 03-03-83	2*	Wolf's Bus Lines	Gettysburg, PA via Baltimore - Atlantic City	274
40. 03-03-83	2*	Leisure Time Tours	Cockeysville, MD - Atlantic City	151
41. 03-08-83	1*	Vermont Transit	Portsmouth, NH - Portland, ME	50
42. 03-10-83	3*	Great Southern Coaches	West Memphis, AR - Hoxie, AR; St. Louis - Cape Girardeau; various AR MO routes	190
43. 03-15-83	1*	Sam Van Galder	Madison, WI - O'Hare Airport	125
44. 03-15-83	1*	Arrow Line	Hartford - Albany via Springfield, Lee, Lenox, & Pittsfield	109
45. 03-15-83	2*	Lion Inc.	Ocean City, MD - Atlantic City via Lewes Ferry	82

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OTHER CARRIERS, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
46. 03-21-83 1*	Jack Rabbit Lines	(1) Mankato - Minneapolis (2) Mankato - Winona (3) Sioux City, IA - Omaha, NE	305
47. 03-21-83 1*	Kerrville Bus Company	Belton - Austin, TX	58
48. 03-21-83 1*	Blue Bird Coach Lines	Rochester - Syracuse	97
49. 03-21-83 1*	St. Paul & Suburban Bus Co.	Superior, WI - Minneapolis via I-35	158
50. 03-24-83 4*	Atlas Travel Tours	US/Canada Boundary - Skagway, AK via Klondike Highway 2	10
51. 03-28-83 1*	CLD Transp.	New York City - Atlantic City	130
52. 03-28-83 2*	Niagara Scenic Bus Lines	Niagara Falls, NY - Buffalo Airport	25
53. 03-29-83 1*	O'Hare Wisc. Limousine	(1) Crown Point, IN - De Kalb, IL via O'Hare Airport (2) Kenosha, WI - O'Hare Airport	179
54. 03-30-83 1*	Illini-Swallow	Peoria, IL - Rock Island, IL (see #10)	--
55. 03-30-83 1* (Republished 05-26-83)	Peter Pan Bus Lines	(1) Greenfield - Deerfield, MA, (2) Greenfield - Williamstown, MA; (3) Williamstown - Pittsfield, MA; (4) N. Adams - Pittsfield, MA; (5) Boston - Hampton, NH; (6) Springfield, MA - Hampton, NH	216
56. 03-31-83 2*	Caravan Coach Lines	Paterson, NJ - New York City	16
57. 03-31-83 2*	Jim Thorp	Bowmanstown, PA - Atlantic City via Philadelphia	131
58. 04-01-83 2*	United Charter	Ridgefield, NJ - New York City	9
59. 04-06-83 1*	Leeway Fleet	Ft. Dix, NJ - Philadelphia	40
60. 04-06-83 1*	Travel Time Bus	(1) Springfield, MA - West Hartford, CT; (2) West Hartford - New London; (3) West Hartford - Mystic; (4) Fitchburg, MA - Mystic; (5) Fitchburg - Springfield	332
61. 04-07-83 3*	Hudson Transit	Remove restriction against passengers between NY City and an area of NJ	--
62. 04-07-83 2*	Arnel Coach	Atlanta - Columbus, GA via I-85 and 185	108

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

OTHER CARRIERS, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
63. 04-07-83 1*	Mo-Trans Bus	Des Moines - Ottumwa via Iowa 163 & US 63	89
64. 04-07-83 1*	Trans Bridge	Bethlehem, PA - Atlantic City	113
65. 04-12-83 2*	Jairo Lopez dba Tricentennial	New Haven, CT - LaGuardia, JFK, & Newark Airports serving all intermediate points.	87
66. 04-13-83 3*	Suburban Trails	Intrastate intermediate point authority over various routes in New Jersey.	--
67. 04-14-83 2*	New Britain Transportation	Stamford, CT - NY City via I-95, interstate only.	29
68. 04-14-83 3* (Republished 05-24-83)	Suburban Trails	Various New Jersey routes, intrastate only.	--
69. 04-15-83 2*	Jak Rabbit Lines	Stamford, CT - NY City via I-95, interstate only.	29
70. 04-18-83 2*	NY-Keansburg-Long Branch	Lakewood, NJ - NY City via US 9, Garden St. Pkwy, NJTP & I-495.	55
71. 04-20-83 1*	Wisc. - Ill. Stages	(1) Lake Geneva, WI - Chicago via Wis 120, Ill 47 & I-90 (2) Antioch, IL - Chicago via Ill 173 & I-94.	110
72. 04-20-83 1*	Merced Transp. dba Via Charter Lines	Merced, CA - Yosemite Park via U.S. 140	76
73. 04-20-83 1*	West Shores Leasing	(1) Chandler, AZ - El Centro, CA via AZ 87, US 80, I-8 (highways are misdescribed but appears intent is to operate via Phx) (2) El Centro - San Ysidro via I-8 & I-805 (3) San Ysidro - San Diego via I-5 (4) San Diego - Los Angeles via I-5 & I-10.	500
74. 04-21-83 2*	NJ Transit	Various New Jersey routes.	21
75. 04-22-83 2*	NJ Transit	Various New Jersey routes	8
76. 04-27-83 1*	Connecticut Airport	Hartford, CT to LaGuardia and JFK.	120
77. 04-28-83 1*	Trans-Bridge Lines	Bethlehem, PA - Washington, DC	200
78. 04-28-83 2*	Real Transit	Long Valley, NJ - New York City	60
79. 05-04-83 1*	Asbury Park - NY Transit	Various routes North Jersey shore and New York City.	160

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OTHER CARRIERS, CONTINUED

	Federal Register Publication Date (*See above explanation)		Name of Carrier	Principal Termini and Routes	Estimated Route Miles
80.	05-03-83	3*	Hudson Transit Corporation	(1) pick up passengers east bound at Corning, NY & discharge west bound, (2) allow service at intermediate points between Binghamton & Corning, (3) serve intermediate points between Endicott & Vestal, NY	74
81.	05-04-83	1*	Niagara Scenic Bus Lines	Intrastate authority in connection with No. 53 - 03-28-83	--
82.	05-09-83	2*	A & W Bus Svc.	Fredericksburg, VA-Washington, DC	48
83.	05-10-83	2*	Arrow Line	Between Springfield, MA, New Haven, Hartford, Waterbury, Bridgeport, Norwich, and New London AND Atlantic City.	529
84.	05-06-83	3*	Hudson Transit	Remove Interstate restriction against service between New Paltz - Modena, NY on the one hand and NY City and points on NJ 17.	--
85.	05-18-83	2*	Eagle Bus	NY City - Atlantic City	130
86.	05-19-83	1*	Chenango Valley	Oneonta, NY - Roscoe, NY via NY 28, 10, 206, & 17	60
87.	05-20-83	1*	Oscar Barnett dba Fairfield Stages	Oakland - Sacramento via I-80 serving Travis Air Force Base as off-route point	82
88.	05-20-83	2*	Salem Transp.	NYC-Trenton, NJ-NYC-Elizabeth, NJ	109
89.	05-20-83	2*	Connecticut Limousine	Hartford, CT - LaGuardia and JFK Airports	120
90.	05-25-83	4*	James Stepp dba Mt. St. Helens' Guided Tours	Portland, OR - Mt. St. Helens, Washington	60
91.	05-31-83	1*	Roberts Holiday Lines	(1) L.A.-Bakersfield-Fresno-Modesto-Stockton-Sacramento (2) Long Beach-Montebello-L.A. (3) Irvine-Santa Ana-Laguna Hills (4) Santa Ana-Riverside-San Bernardino -Barstow-Las Vegas (5) Sacramento-Reno (6) Santa Ana-Montebello (7) Riverside-Palm Springs-Indio-Laughlin, NV (8) Santa Ana-Long Beach (9) L.A.-San Bernardino (10) Sacramento-San Francisco (11) Stockton-San Francisco (12) Phoenix-Laughlin, NV - Las Vegas	1,842

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

OTHER CARRIERS, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
92. 06-02-83 3*	Connecticut Limousine	Intrastate rights in NY on routes between (1) Farmington, CT and NY City airports and (2) Wethersfield, CT & NY City airports.	30
93. 06-03-83 1*	Olympia Trails	Newark, NJ Airport - NY City	10
94. 06-06-83 1*	Dell Limo Svc.	Indianapolis - Columbus, OH via US 40 & I-70	171
95. 06-09-83 1*	Hudson Transit	Binghampton - Olean, NY via NY 17	164
96. 06-16-83 1*	Teton Stage Line	Pocatello - Idaho Falls, ID via US 15	49
97. 06-17-83 1*	Birnie Bus Service	(1) Watertown - Utica, NY via NY 126, NY 26, NY 12 D & NY 12 (2) Lowville - Boonville, NY via NY 12	113
98. 06-17-83 1*	New England & Western	S. Kingstown (Kinston) RI - New London, CT via RI 138, 2, 112, 91 & 3 Conn. 2 & I-95 (Republished 07-26-83)	50
99. 06-21-83 1*	West Hunterdon Transit	(1) Flemington, NJ - Upper Black Eddy, PA; (2) Flemington, NJ - Doylestown, PA; (3) Flemington, NJ - New York City; (4) Bridgewater Township, NJ - Newark, NJ	123
100.06-21-83 1*	Raymond Chenoweth dba Best Express	Las Vegas & Hoover Dam, AZ via U.S. 93	30
101.06-21-83 2*	Caravan Coach	Various NY routes & New York City	120
102.06-24-83 1*	Fugazy Express	(1) Stratford, CT & New York City Airports; (2) New Haven, CT & New York City Airports	77
103.06-27-83 2*	Connecticut Limo	New Haven, CT - New York City (Manhattan)	77
104.06-30-83 2*	Suburban Trails	Acquisition of interstate authority of Lincoln Transit, New York City - Cape May via Atlantic City, NJ	
105.07-05-83 1*	Fugazy Express	New York City - Atlantic City via various routes.	260
106.07-15-83 2*	NJ Transit	Route in Howell Township, NJ	2

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

OTHER CARRIERS, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
107.07-18-83 1*	Railroad Transfer Service	(1) New Haven, CT - Newport, RI, (2) Kingston, RI - Warwick, RI, (3) Pawcatuck, CT - Providence, RI	165
108.07-19-83 1*	M.D.B. Limo	Creskill, NJ - Queens, NY	15
109.07-20-83 1*	Valley Transit	Victoria - Refugio, TX	44
110.07-20-83 1*	Englander Coach	Bennington, VT - Williamstown, MA (Republished 08-01-83)	12
111.07-21-83 2*	Westours Motor Coaches	(1) Haines, AK - Porcupine, AK via AK 7; (2) Fairbanks, AK - Beaver Creek, Yukon; (3) Tetlin Jct AK - Boundary, AK via AK5; (4) Valdez, AK - Delta Jct via AK4; (5) Tok, AK - Seward, AK via AK 1 & 9	917
112.07-21-83 2*	Eugene Hoops dba Roadrunner Bus	Coeur d'Alene, ID - Lewiston, ID via US 95	118
113.07-22-83 2*	Commuter Comfort	(1) Parker, VA - Wilderness Corner, VA; (2) Lake of the Woods, VA - D.C.	60
114.07-28-83 1*	Trans Bridge Lines	Bethlehem, PA - State College, PA via Allentown & Bloomsburg on PA 9 & I-80	170
115.07-29-83 2*	Hub Bus Lines	Hartford, CT - Boston Logan Airport	107
116.07-29-83 1*	Dash Transportation	New York City - Meadowlands, NJ	10
117.07-29-83 1*	Oklahoma Transportation	Enid, OK - Woodward, OK via OK 15	86
118.07-29-83 1*	Blue Bird Coach	Buffalo, NY - New York City via I-90, I-81, NY 17, NJ 17 & 4	439
119.08-01-83 1*	RBR Corp dba Alpine Limo	(1) South Lake Tahoe, CA - Reno; (2) South Lake Tahoe - Tahoe City	70
120.08-01-83 1*	Dunn's Bus Service	Port Jervis - Atlantic City, NJ	173
121.08-04-83 2*	Red & Tan Tours	W. Haverstraw, Nanuet, Mt. Ivy, NY - Atlantic City	190
122.08-11-83 2*	Vermont Transit	(1) East Boston - Lincoln, MA via Newton; (2) Mass 2 & 128 to MASS-NH Boundary at Tyngsboro	60

*The numbers in the second column denote the type of application: 1 - Interstate and Intrastate; 2 - Interstate only; 3 - Restriction Removal; and 4 - Fitness only.

OTHER CARRIERS, CONTINUED

Federal Register Publication Date	(*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
123.08-11-83	1*	Prairieland Tours & Travel	(1) St. Louis - O'Hare Airport Chicago via I-55; (2) St. Louis - O'Hare via I-55, I-72, & I-57; (3) St. Louis - O'Hare via I-55, IL 121, I-74 (Peoria) IL 29, I-80, & I-55; (4) Davenport, IA - Indianapolis via I-74; (5) Davenport & O'Hare via I-74, I-80, I-55, & I-294; (6) Decatur - LaSalle, IL serving airports in each major town as off-route point.	1,152
124.08-12-83	2*	Lakeland Bus Lines	Various N.W. New Jersey routes	40
125.08-15-83	1*	Colorado Mountain Express	Denver - Grand Junction, CO via I-70 & via US 6	400
126.08-15-83	2*	Hudson Bus Transportation	(1) West Haverstraw, Mt. Ivy, Nanuet, NY - Atlantic City; (2) various NY & NJ routes	250
127.08-19-83	1*	Casino Limousine	Cherry Hill, NJ - Atlantic City	55
128.08-24-83	1*	Sam Van Galder	Monroe, WI - Freeport, IL - Rockford, IL - O'Hare	114
129.08-29-83	2*	Staten Island Commuter	Staten Island - Manhattan	25
130.08-29-83	1*	Texas Bus Lines	(1) Grand Prairie, TX - Montgomery, AL via I-20 & US 80 (2) San Antonio - Galveston, TX via US 87, TX 35, TX 36, TX 332, TX 288, TX 35, and TX 6	930
131.08-31-83	3*	Winston Airport	Intrastate rights in connection with #15 above between Riverhead Montauk, Orient Point & Port Jefferson	---
132.08-31-83	2*	Kerrville Tours	San Marcos - Houston via Texas 80 & I-10	170
133.08-31-83	1*	Silver State Stageline	Reno - Carson City - South Lake Tahoe	61
134.09-13-83	1*	Kerrville Bus	(1) Houston, TX - Shreveport, LA via US 59, US 79, I-20 (2) Tenaha, TX - Shreveport, LA via US 84, US 171	309
135.09-15-83	1*	Schweitzer Travelcades	Various routes in Reno, NV - North Shore Lake Tahoe area	60

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OTHER CARRIERS, CONTINUED

Federal Register Publication Date (*See above explanation)	Name of Carrier	Principal Termini and Routes	Estimated Route Miles
136.09-20-83 1*	Leisure Time Tours	(1) Wilmington, DE - Atlantic City, NJ (2) Philadelphia - Atlantic City (3) New York City - Atlantic City (4) Rockland County, NY - Atlantic City	313
137.09-20-83 2*	Lion Corp.	King of Prussia, PA via Philadelphia to Atlantic City	80
138.09-23-83 3*	Bonanza Bus	Pittsfield - Williamston, MA (1) via US 7 (2) via MA 9, MA 8, MA 2	51
139.09-30-83 2*	Century Artists	(1) Stratford, CT - New York City (2) Newark, NJ - New York City	60
140.10-03-83 1* (Republished 10-13-83)	Texas Bus Lines	(1) Odessa, TX - Shreveport, LA (2) Tyler, TX - Shreveport, LA (miles exclude those in 08-29-83 application)	422
141.10-04-83 1*	C & J Travel	Dover, NH - Boston, MA via NH 4, I-95, & US 1	70
142.10-04-83 2*	Cape Transit	Reading, PA - Atlantic City, NJ via Philadelphia	206
143.10-13-83	Golden West	(1) Pasadena - San Ysidro, CA via I-210, I-605, & I-5 (2) Long Beach - San Ysidro, CA via CA 19 & 91 and I-5	150

[Appendix Items B, C, D, retained in subcommittee files.]

APPENDIX E

[From the Denver Post, Mar. 14, 1983]

BUS SERVICE LOSS ISOLATES JULESBURG—JUNCTION TOWN NOW PASSED BY

(By Jack Cox)

JULESBURG.—Every day before dawn, a big red Trailways bus used to make a quick stop in Julesburg on its way from Chicago to Denver.

It would sit in the driveway of the Platte Valley Inn for a minute or so, then, with a slam of cargo doors and a whisper of air brakes, would head out—taking Lena Schmidt to visit her son, carrying Ruby Albert to the doctor or moving samples of wheat from Jim Kontny's grain elevator to an inspector so they could be graded before the market closed that day.

On its return trip, the bus might haul an eight-foot tailpipe for Steve Lechman's auto parts store, a box of pharmaceuticals for Bob Heuermann's Rexall drugstore or a packet of computer-written payroll checks for Rhoda Happel at the Sedgwick County Memorial Hospital.

The bus won't make those stops anymore.

Service has been discontinued, and the community that cals itself the "Gateway to Colorado" suddenly has become inaccessible except by private car. Like hundreds of other rural American towns, Julesburg is a victim of a four-month-old law that makes it much easier for the interstate bus lines to drop unprofitable runs.

Two other towns in the region—Medicine Bow and Hanna in Wyoming—also are scheduled to lose all service, as Greyhound moves to "streamline" its system under the Bus Regulatory Reform Act of 1982.

In addition, Trailways plans to end service to the Nebraska towns of Sidney and Chappell which still are served by Greyhound. And Greyhound no longer is stopping in six Colorado communities still served by Trailways—Castle Rock, Fountain, Watkins, Byers, Deer Trail and Agate.

"We are able to gear our service to the needs of the traveling public, as opposed to the needs of legislators," observed Ron Zelrick, Greyhound's director of schedules.

For the Julesburg merchants who have been relying on the bus for overnight and weekend package deliveries, and for the residents who are too old, too young, too poor or too feeble to drive—or simply are reluctant to tackle big-city traffic—the sense of abandonment is acute.

The 1,600 people in Julesburg, a former Pony Express stop in the extreme northeastern corner of Colorado, have found the loss epecially hard to accept because the town sits astride the busy main line of the Union Pacific and is only a five-minute drive from the junction of two major highways—Interstates 76 and 80.

"We've really got a tremendous highway system here, and no public transportation in or out," said Mayor Clark Bernhardt, who wrote to Trailways in January to protest the pullout, but still was awaiting a response late last week.

"What really upsets me about this," he added, "is that we fought awfully hard to get bus service here in the first place. It was quite an ordeal."

Trailways started serving Julesburg in 1981, more than a decade after the passenger trains quit running and town leaders began a long search for a substitute. But no buses have stopped in the town since Feb. 5, when the line dropped its northern route from Sterling to North Platte, Neb., in favor of a southerly route that goes through McCook, Neb.

About 150 people signed petitions objecting to the curtailment. But the Colorado Public Utilities Commission, which received the protest, was unable to delay or halt the change.

All we could tell them was that this is an interstate route and under the new act, they can change the schedule on it without any action by the PUC," said Ralph Knull, chief of the state agency's transportation section.

Ironically, almost as a reminder of the loss, Julesburg still gets a daily visit from a bus.

Twice a day, a red, white and blue Greyhound flashes past on the outskirts of town skimming along Interstate 76 between the irrigated farms along the South Platte River and the barren, yucca-studded hills to the south. But the bus can't legally make a stop, because Greyhound has no authority at present to provide service on the route between points within Colorado.

"We have an application pending before the Interstate Commerce Commission to serve Brush, Fort Morgan and Sterling. It would allow us to open the doors on our service from Denver to Omaha," said Ernie Simmons, senior director of operations for Greyhound.

"We did not specifically list Julesburg," he added, "because our application was made before Trailways ended service there."

In a telephone interview last week from Greyhound headquarters in Phoenix, Simmons was asked if the company might be interested in stopping in Julesburg.

"We'd have to look at it," he said. "We've had no request from anybody to provide service."

Harry Galligan, executive secretary of the Colorado Public Utilities Commission, said Greyhound probably would have no trouble getting permission to serve Julesburg. But the townspeople so far have not approached the bus line, apparently in the belief that Trailways might have second thoughts and reinstate the service.

Freda Lanckriet, the innkeeper who acted as ticket agent, said Trailways did nearly $14,000 worth of business in Julesburg last year, "about half in freight and half in tickets."

But Ken Millsap, a Trailways executive in Dallas who handles schedules west of the Mississippi River, said the town generated "very, very little" revenue compared to what was needed. Millsap said 90 percent of the passengers on the route were "long-haul," and the few who got on the Julesburg didn't justify the stop.

Lena Schmidt, a 72-year-old widow who said she "wouldn't drive to Denver on a bet—no way," was among the Julesburg residents who used the bus regularly.

"It was handy for me, because I could catch the bus here and ride to Denver to see my son. Then I could catch a bus to the airport and go visit my daughter in California and my other son in Las Vegas. I'd make a big circle. Now I'm just stuck here," Mrs. Schmidt said, wringing her hands.

"I could drive to Sterling now and catch a bus at 6:30 at night and get into Denver at 10:30," she added, "but I don't want to travel at night I'd be scared to death to.

* * * * * * *

Ruby Albert, a 57-year-old cancer victim, took the bus to see a specialist and get radiation treatments and medicines at University Hospital in Denver.

"Boy, I hate to see that bus go out," she said. "I've been going ever since 1980—at least once a month, sometimes every week, sometimes twice a week. With the money I've spent on that bus, I could have bought a bus."

Miss Albert, an irascible, salty-tongued women who painted houses, mowed lawns and did other outdoor work before her illness sapped her strength, said she didn't want to drive anywhere else to get a bus because something might happen to her car if she had to stay overnight in Denver.

An alternative to the Sterling connection—catching a Greyhound in Big Springs, Neb., about 13 miles to the northeast, and traveling west through Cheyenne and then south to Denver—would take too much time and cost too much money, she said.

"I don't like to ask anybody for a lift," Miss Albert added.

Banker Joe Geren, president of the Julesburg Chamber of Commerce, admitted that the town can survive without the bus.

"But it's never fun to lose a service," he remarked. "If we want to get on an airplane, we've got to drive 80 miles to North Platte or 180 miles to Denver. If we want to catch an Amtrak train, we've got to go almost 70 miles to Wray. So now, with the bus gone, we definitely feel more isolated."

APPENDIX F

[From the Youngstown (Ohio) Vindicator, Jan. 4, 1983]

TRAILWAYS QUITS

The news story reporting that Trailways Inc. will drop service to Youngstown commented that "ironically," Trailways is able to quit operations here because of recent legislation which makes it easier for a bus line to discontinue service.

It is a little more than ironic, Trailways conducted a long (and expensive) campaign to get that law enacted. It convinced legislators and editors—including this newspaper—that Greyhound had an unfair advantage under the old law, and that Trailways, and perhaps other interstate lines as well, could offer Ohioans much better service if they could carry Ohians on intra-state trips.

Legislation to that effect—weakening regulation—is not many months old. Now Trailways is ending what remains of a service that once offered eight runs a day out of Youngstown.

Two conclusions suggest themselves: Trailways management did not study the possibilities of intra-Ohio service before spending many thousands of dollars in a lobbying and public relations campaign to expand a service that has proved impracticable, or it deliberately deceived Ohioans into supporting legislation that it intended to use to reduce, not add, services.

Granted, a depressed economy hasn't helped, but bus patronage does not spring spontaneously from the earth. The Western Reserve Transit Authority has proved that, to its profit.

There is little evidence that Trailways made any serious promotional effort to use the new law to serve the State.

7878 7054

PUCO NO. 11323-R

Supplement No. 1 to
ABL SCHEDULE 6-7
Cancels
ABL Schedule 6-7

AMERICAN BUSLINES, INC.

DETROIT - TOLEDO - FORT WAYNE

ISSUED: April 22, 1983

EFFECTIVE: May 25, 1983

CHANGES: Run 751 - 1130am Detroit-Toledo and
Run 754 - 1 15am Toledo-Detroit are discontinued due to the lack of patronage.
Run 701 - 9 00am Detroit-Fort Wayne and
Run 704 - 1 45pm Fort Wayne-Detroit are discontinued due to the lack of patronage.
Run 753 and 752 are renumbered 553 and 552 respectively.

DETROIT—TOLEDO—FORT WAYNE

READ DOWN			Folder 5	7878 ABI		READ UP		
553	751	701	No.		No.	552	754	704
6 45				Lv DETROIT, MICH. (ET)TWI Ar		8 45		
8 00				Ar Toledo, Ohio Lv		7 30		
----	----			Lv Toledo, Ohio Ar		----	----	
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----	----			Archbold		----	----	
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----	----			•Bryan		----	----	
----	----			•Hicksville, Ohio (ET)		----	----	
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----	----			Ar Indianapolis, Ind. SET Lv		----	----	

Reference Marks for 7862, and 7871.

(ET)—Eastern Time.
(EST)—Eastern Standard Time.
(CT)—Central Time.
[illegible]—Flag stop.
hs—Highway stop, does not go into town.
[illegible] or ‡—Daily except Saturdays, Sundays and Holidays.
D—Discharge passengers only.
H—Via Holland Tunnel—New York-Newark local passengers carried.
▼—Change effective this issue.
*—Full service agency station.
(PABT)—Port Authority Bus Terminal.
[illegible]—Package express pickup and delivery service available.
ASB—Operated by Ashland and Shamokin Auto Bus Co., d/b/a King Coal Trailways.
DNM—Detroit-Mobile.
DNZ—Detroit-Montgomery.
FAB or s—Fullington Trailways.
GCB—Grove City Bus Line.
NLA—New York-Chicago-Los Angeles.
NSF—New York-Chicago-San Francisco.

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INS. & TARIFF DEPT.
PUBLIC UTILITIES COMMISSION OF OHIO

ISSUED BY: SCHEDULE DEPARTMENT, 1500 JACKSON STREET, DALLAS, TEXAS 75201
ALL STATIONS: POST FOR PUBLIC VIEW W. T. MANN, SR. SCHEDULE ADMINISTRATOR

APPENDIX G

[From the Tulsa (Okla.) World, Aug. 18, 1983]

RURAL BUSES ROLLING TOWARD END OF THE LINE IN OKLAHOMA

(By Tom Carter)

A Greyhound ride through rural Oklahoma is a train trip minus the rails.

There is no turnpike, toll booth or Stuckey's, but 30,00 pounds of steel and rubber cruising countryside to which farmers have given sweat, but August won't give rain.

The Oklahoma City to Tulsa route on old U.S. 66 is look at 10 incorporated answers to Mayberry, U.S.A. communities with barber poles, town squares, and Sear's catalog outlets. It's terrain whose skyscrappers are windmills and billboards are painted on barn roofs.

It's a million years of landscape at 55 miles per hour. It's church steeples that glisten in the sun, and farm implements that rust in the heat.

A bus ride through this Oklahoma is 76 years of statehood for a $9.69 ticket.

But the demand for the ticket is lower than the price.

So the Tulsa local is going another route: the way of trolley cars and passenger trains. If Greyhound officials have their way, Oklahoma's rural coaches are coming to the end of their line.

There will be no round trip.

The bus line has filed a request with the Interstate Commerce Commission to take service from 17 small State towns. Trailways bus System wants to pull out of one, and MK&O) out of six.

Bus officials say nobody wants to ride the rural routes anymore. They say people want to stay on the interstates. They say rural America can't afford travel.

They say nobody has said they's wrong.

Charles A. Hermon, 54, has driven for Greyhound a quarter-century, with most of the time spent on the local, off-intestate routes. He remembers three coaches daily, seven days weekly, taking 129 passengers from Claremore to Oklahoma City and back.

Now, there is only one coach daily, only five days weekly, and Hermon can't remember when his passengers have numbered more than eight.

"We don't have but one ticket agent left," Hermon said. He makes stops in or near Edmond, Wellston, Chandler, Luther, Davenport, Stroud, Depew, Bristow, Kellyville and Sapulpa. "There is only one, 'cause all the other ticket agents quit or died. So I just slow down sometimes when I pass the bus stops."

In Chandler, the stop is a filling station; in Wellston, a drugstore; and in Stroud, a vacant lot.

"The old Stroud station burned down," Hermon said. "Now, well, if I pick up somebody, he usually just waves me down."

Hermon said it costs Geryhound $1.50 for each mile a coach is run. That calculates to $178.50 in operating expense from Oklahoma's largest city to its second largest through 10 of its smaller ones.

Hermon earns 40½ cents for each mile he drives. The rate is the highest drivers can achieve, he said. That's paid after two years' experience.

"After that, the only way you can earn more money is to take a longer route," he said. "So if they stop this route, I'll have to take a route from a younger driver, and he'll have to take one from somebody else. Down the line, somebody will be without a job.

"I'll probably take a longer route, so it will pay more," he said. "The older a man gets, the harder he has to work to make more money 'cause the farther he has to drive. That's a sore spot for us older drivers.

"I got four years left till retirement," he said. "But I got a 15-year-old daughter, and she says she wants to be a doctor. So I may stay working a little while longer.

"This ain't a bad run," he said. "It's the only one in the state where the driver can be off every weekend. And when there is passengers, most are pretty nice. I have to watch close when they get on to be sure they don't have no whiskey. If they smoke that marijuana, I just get on the microphone and tell whoever is somking it to put it out or I'll put them off the bus. I can smell it. Most people obeys the rules.

Hermon talked in spurts, drawing inspiration from passing countryside whose vastness for him is never more than two lanes wide. Past Depew, there was a sign for Tulsa's downtown Piccadilly Cafeteria, closed now for six years. In Bristow, there was a sign for "Faith Outreach," a storefont "church that's contagious: it spreads the word."

There were other signs, about businesses, and about the times, present and past. Hermon said he would talk about the bus and its passing from Americana to everybody. But not today.

A reporter was his only passenger.

APPENDIX H

GREYHOUND LINES, INC. INTER-OFFICE CORRESPONDENCE

TO: F. L. Nageotte, Chairman
F. Dunikoski, President

FROM: W. L. McCracken
Senior Vice President

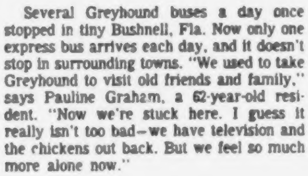
DATE: August 5, 1982

SUBJECT: Wall Street Journal, August 2, 1982
"Bus Deregulation Gains Favor, Worrying Small Towns, Small Operators and Elderly"

On August 2, 1982 The Wall Street Journal published an article on bus deregulation.

Although the article notes the many substantial benefits deregulation brings to consumers and carriers, it obscures these positive factors in an assemblage of misinformation and misconception which when taken together reflect minimal faith in the American free enterprise system.

The reasons underlying the movement toward less government intrusion in business are well known. While we will not enumerate these obvious, proven benefits of marketplace competition, in lieu of bureaucratic regulation, we believe very strongly that the errors of The Wall Street Journal article must be corrected.



> Several Greyhound buses a day once stopped in tiny Bushnell, Fla. Now only one express bus arrives each day, and it doesn't stop in surrounding towns. "We used to take Greyhound to visit old friends and family," says Pauline Graham, a 62-year-old resident. "Now we're stuck here. I guess it really isn't too bad—we have television and the chickens out back. But we feel so much more alone now."

Bushnell is correctly described as "tiny." Current population is 983, of which an estimated 70% are residents of the Sumter State Prison at Bushnell. And it is today served by one daily Greyhound schedule both north and south on the route between Tampa/St. Petersburg and Ocala.

Under regulation Greyhound was required to operate three round trips daily on the local road through Bushnell, while only one schedule could use the Interstate Highway to provide the vast majority of the passengers on these schedules the most comfortable and expeditious trip. Now Greyhound can offer four daily schedules on the Interstate Highway which allows a 25% savings in travel time.

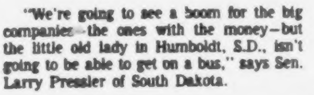
Greyhound has merely tailored its schedules to meet market needs as evidenced by sales instead of bureaucratic perceptions. In fact Greyhound sales at Bushnell in 1981 ($29,615), a full year under deregulation, equaled sales in 1979 ($25,316) when regulation existed. 1979 sales were the equivalent of one passenger per schedule while 1981 equaled three passengers per schedule.

Since the buses passing through Bushnell average less than 20 passengers on a 43 passenger bus, there is clearly sufficient seating capacity.

While Ms. Graham doesn't name the locality to which she cannot travel now, a review of Greyhound's schedules shows service at or near all points previously served.

The Wall Street Journal repeatedly uses selected tidbits of information to support an apparently preconceived notion that bus deregulation is bad. It totally ignores the exhaustive studies by the Interstate Commerce Commission, U.S. Department of Transportation, and The Florida Legislature which uniformly conclude -- based on facts -- that bus deregulation in Florida has been a success.

It is unfortunate that The Wall Street Journal didn't talk to the Chairman of the Florida Public Service Commission, the man in charge of the agency that regulated buses prior to July 1, 1980. If it had, it would have heard the opinion that total deregulation has been beneficial to Florida. When Chairman Joseph Creese testified before The Motor Carrier Rate Making Study Commission on April 2, 1982, he admitted that his earlier fears of an adverse effect on rural areas proved unfounded. Again, a person with facts contradicts the opinions of The Wall Street Journal reporter.



"We're going to see a boom for the big companies—the ones with the money—but the little old lady in Humboldt, S.D., isn't going to be able to get on a bus," says Sen. Larry Pressler of South Dakota.

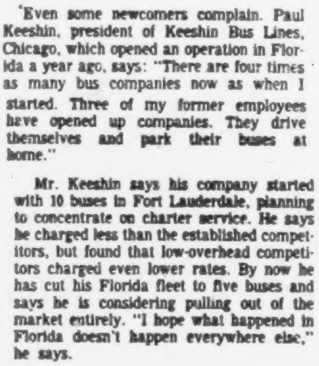
Fact -- there is no intercity bus service in Humboldt today. But there is service available 7 miles away at Pumpkin Center and 15 miles away at Sioux Falls. We know of no plan to discontinue those services.

Humboldt is a town of some 400 people. Presumably the Senator used it as an example of rural America which he believes stands to suffer from bus deregulation. But what do the residents of rural America say when they are directly asked if they share the Senator's concern? In Arizona the voters were allowed to say whether they wanted total deregulation, just like Florida. And the rural voters (we have excluded the metropolitan areas of Phoenix and Tucson) overwhelmingly endorsed deregulation by a margin of 63 to 37.

Also the action of the Wisconsin legislature, in giving near unanimous endorsement to deregulation, shows that elected officials close to rural constituents believe deregulation is good.

Without exception those who have studied the "loss of service" issue have concluded that regulation is the culprit. Bus service to rural areas has declined at a significant pace in the last decade under pervasive regulation. As many as 1500 locations, or 16% of points served, have seen the end of bus service, under regulation. The end of regulation actually signals a new and improved era for rural intercity bus service. Florida State Representative George Sheldon told the Transportation Research Board:

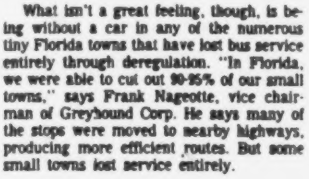
> "Opening up entry to new carriers and permitting existing carriers to experiment with innovative price and service options will play a major role in halting the pull-out trend. If buses are allowed greater freedom to haul express packages, revenues from this service could help cover costs on routes that are otherwise unprofitable. The ability to provide these profit-making services will attract carriers to the smaller communities and make government intervention unnecessary."



'Even some newcomers complain. Paul Keeshin, president of Keeshin Bus Lines, Chicago, which opened an operation in Florida a year ago, says: "There are four times as many bus companies now as when I started. Three of my former employees have opened up companies. They drive themselves and park their buses at home."

Mr. Keeshin says his company started with 10 buses in Fort Lauderdale, planning to concentrate on charter service. He says he charged less than the established competitors, but found that low-overhead competitors charged even lower rates. By now he has cut his Florida fleet to five buses and says he is considering pulling out of the market entirely. "I hope what happened in Florida doesn't happen everywhere else," he says.

Mr. Keeshin unknowingly sums up the conflict facing those who want to compete with others but don't want others to compete with them. He also seems to say he wants to compete in others' back yards (Florida) but he doesn't want competition at home (Illinois).

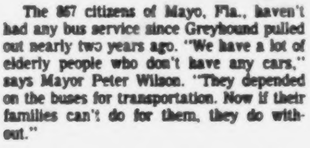


What isn't a great feeling, though, is being without a car in any of the numerous tiny Florida towns that have lost bus service entirely through deregulation. "In Florida, we were able to cut out 90-95% of our small towns," says Frank Nageotte, vice chairman of Greyhound Corp. He says many of the stops were moved to nearby highways, producing more efficient routes. But some small towns lost service entirely.

It is not true that "numerous tiny Florida towns" have "entirely" lost bus service. Almost without exception those towns no longer receiving direct bus service have bus service available within a few miles. This is the point Mr. Nageotte was making to *The Wall Street Journal*. Unfortunately, it was not reported accurately or fairly. Mr. Nageotte said:

> ". . . if there is service within seven miles we consider that city not abandoned because in big cities you go more than seven miles to get to a terminal. And we found that that knocked out about 90 to 95% of those towns."

Those who foresee loss of service fail, like *The Wall Street Journal*, to define their terms. If service was previously available once a day, on a local multi-stop bus, at a roadside stop, five miles from a person's residence and it now is provided several times daily at a bus terminal where express buses are available, but is nine miles from the residence, has service been lost? It is clear that service has improved, not deteriorated.



The 857 citizens of Mayo, Fla., haven't had any bus service since Greyhound pulled out nearly two years ago. "We have a lot of elderly people who don't have any cars," says Mayor Peter Wilson. "They depended on the buses for transportation. Now if their families can't do for them, they do without."

Mayo did have Greyhound service before deregulation. This was not because there was a need for the service. In fact, barely one person a day bought a ticket at Mayo. But this meant that people travelling between Tallahassee - Gainesville - Ocala - Orlando were required to travel an extra hour and be deprived of the benefits of interstate highway travel.

> Clifford Carlstedt, president of the Sarasota, Fla., chapter of the Grey Panthers, which campaigns for older peoples' interests, says: "Deregulation will have a very detrimental effect on older people. A lot of older people can no longer drive or can't afford a car."
>
> William Clark, an official of the South Central Florida Agency on Aging, says: "The main complaint we get from elderly people in rural areas where they've lost bus service is that they've lost independence. For these people, a loss of independence means a loss of dignity and pride."

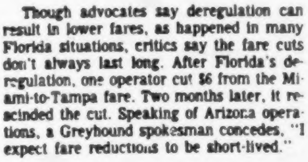
These professional advocates speak in generalities. They offer preconceived notions, not facts. The facts are that more Floridians -- young, middle aged, and old -- have more bus service today than under regulation. A classic example is the Clearwater, Florida area -- the population is over 100,000 with a large proportion of senior citizens. Before deregulation it had only a local bus to Tampa. Today it is served for the first time by Greyhound and Trailways with through buses and connecting bus service to points throughout Florida and the nation.

The same is true in Arizona where deregulation has dramatically increased available bus service. And the fixed income older American surely benefits from the price reductions that competition has produced. More service, more competition, lower fares -- these enhance "independence" -- they don't detract from it. Regulation is actually the villain these spokesmen for senior citizens should be campaigning against. It is regulation that artificially inflates fares to subsidize big city commuters and others; that deprives carriers of the incentive to try new routes, new schedules, and innovative promotional fares; and that forces carriers to devote their energies and money to bureaucratic exercises aimed at curtailing service.

> For many, lack of bus service means a serious loss of hard cash too. "I need to go to the doctor right now, and there is no bus to take me," says Mattie-Lou Stewart, a retired nurse in Webster, Fla. Transportation to her doctor costs $20 round trip. "It takes all the money I have to eat," she says. She receives a monthly Social Security payment of $126.

There is no bus to take her from Webster today, but then our research indicates there has never been an intercity bus service in Webster, under regulation or deregulation.

Actually the Webster area has the same bus service it had before deregulation. Gulf Coast Trailways operates four miles south of Webster on Florida Highway 50, and Greyhound is five miles west on U.S. 301.



Though advocates say deregulation can result in lower fares, as happened in many Florida situations, critics say the fare cuts don't always last long. After Florida's deregulation, one operator cut $6 from the Miami-to-Tampa fare. Two months later, it rescinded the cut. Speaking of Arizona operations, a Greyhound spokesman concedes, "I expect fare reductions to be short-lived."

Facts again prove The Wall Street Journal wrong. Even after two years of deregulation in Florida, fare discounts and promotional pricing continue at a level impossible under regulation. Admittedly, a specific price reduction may be of limited duration but this is a characteristic of marketplace competition and the use of pricing to stimulate sales. Even introductory discount subscription prices for The Wall Street Journal are of limited duration.

No Greyhound spokesman said fare reductions in Arizona would be short lived. He did say that specific promotions would, in all probability, be replaced by others as time passed.

W. L. McCracken

Open Forum

Greyhound Alleges Error In Deregulation Attack; Respondent Asks Data

Phoenix, Ariz. 85077

In your issue of August 1, 1983, you printed verbatim a speech by Professor Paul Dempsey attacking every form of transportation deregulation.

Professor Dempsey falsely states:

"Since November, 1982, Greyhound has petitioned the ICC (Interstate Commerce Commission) for permission to eliminate service to more than 1,300 points in 43 states. A senior Greyhound executive boasted that deregulation enabled it 'to cut out 90-95 per cent of our small towns.' "

So that the record is clear I want your readers to know that no representative of Greyhound ever made that statement because it is not true. Nor to the best of our knowledge has Professor Dempsey ever sought information on this subject from Greyhound.

While Professor Dempsey is a consistent philosophical opponent of deregulation, this does not absolve him of the responsibility of insuring the accuracy of the information he relies upon to attack deregulation.

Professor Dempsey's two short sentences are replete with errors and falsehoods.

First, Greyhound has not petitioned the ICC to discontinue 1,300 points in 43 states. Greyhound, the ICC, or anyone familiar with bus deregulation could have told Professor Dempsey that requests to discontinue are filed initially with the states, not the ICC. Greyhound did request permission in 43 states to discontinue some service. And 31 states approved the requests as being in the public interest. Only a few have been appealed to the ICC.

Secondly, Greyhound has not discontinued service to "90-95 per cent of our small towns," nor has it "boasted" that it did this.

Professor Dempsey's error stems from his reliance upon the popular media for research, instead of going to the sources that possess accurate information. For some time Professor Dempsey has been using the "90-95 per cent" quote but limiting its applicability to Florida only (T.W., Apr. 4, p. 23). His source is the *Wall Street Journal* of August 2, 1982, which itself was erroneous. The senior Greyhound executive actually told the reporter that of the locations Greyhound had dropped from its timetables in Florida, 90-95 per cent continued to have bus service within seven miles.

To further compound Professor Dempsey's misstatement of Greyhound's activities he prefaces the "90-95 per cent" quote by saying the Greyhound executive "boasted" of this fact. Besides assuring your readers that it was not a "boast," I also ask how Professor Dempsey can characterize an interview when he was not present. Even academic freedom at its broadest doesn't countenance this conduct.—W. L. McCRACKEN, *Senior Vice-President and Assistant to the Chairman, Greyhound Lines, Inc., Greyhound Tower.*

Denver, Colo. 80204

Dear Mr. McCracken:

Thank you for forwarding a copy of your letter of August 23, addressed to *Traffic World*. I am surprised to learn that the *Wall Street Journal* article upon which I relied was erroneous. Months before I delivered the speech before the Interstate Carriers Conference referred to in the August 1 issue of *Traffic World*, I made public reference to these small community abandonment activities of Greyhound before seminars attended by executives of both Greyhound and Armour-Dial. Both requested, and were sent, copies of my remarks, again, months before the August 1 issue. Until today, I have never been informed that any of the references I made to your company's abandonment activities were inaccurate.

Since you have now informed me that the *Wall Street Journal* article upon which I relied was inaccurate, insofar as it quoted your company's executives as indicating that Florida deregulation had enabled Greyhound to "cut 90-95 per cent of our small towns," I will delete any future reference to these erroneous statistics. And you are quite right—the choice of the verb "boast" is a poor one, even for a speech, and I will refrain from using it as well.

My paper, "Transportation Deregulation—On a Collision Course?," is only as good as the research upon which it relies, and I have carefully attempted to document each of the sources upon which I base my conclusions. The most recent version of the essay includes 39 pages of text supported by 224 footnotes spread over an additional 52 pages. I cite a wide range of relevant material—from law review articles and books to speeches, letters, and magazine and newspaper accounts of the impact of deregulation. Although it rarely occurs, I am pleased to have the assistance of individuals, like yourself, who will take the time to inform me that a source upon which I have relied is inaccurate, and just as happy to delete or correct that which is erroneous. So it shall be with my references to Greyhound.

Relying upon a speech delivered by a prominent California attorney before the Western Traffic Conference in May of 1983, in which he said "Since November, 1982, Greyhound has petitioned the ICC to drop service to 1,373 points in 43 states," I erroneously reported that Greyhound had petitioned the ICC for discontinuance in 43 states.

In your letter, you correctly indicate that Greyhound has petitioned 43 *states* directly for discontinuance, and that 31 states had approved your petitions. Presumably Greyhound is appealing a number of the denials to the ICC. But I think we both may be missing a more significant point. So to set the record straight, what does this mean in terms of lost service for small communities? How many points are being dropped, and what size communities are being affected? I can assure you that, at least here in the west, the broadcast and print media portray deregulation as isolating a number of rural communities by depriving them of common carrier passenger service. If that portrayal is inaccurate, please provide the data necessary to set the record straight.

APPENDIX J

[From the Atlanta Constitution, Mar. 31, 1983]

PSC DENIES RATE HIKE REQUEST BY GREYHOUND FIRM

(By David K. Secrest)

Angry because Greyhound Lines Inc. has been cutting back its intrastate bus service in Georgia the state Public Service Commission on Wednesday rejected the company's rate case but granted a separate petition from Trailways Inc.

The commissioner voted 4-0 to deny Greyhound's request for a 20 percent hike in passenger rates, saying the carrier had eliminated a number of routes and "doesn't serve the people of this state."

However, the PSC did approve a similar 20 percent rate-increase request from Trailways Inc. in a separate action.

Commissioners said they voted against Greyhound because the company has been eliminating bus runs in Georgia since November under the new federal Bus Regulatory Reform Act of 1982.

"That's not fair." Commissioner Bobby Pafford said. "That's not right when this carrier on its own stops service to all but the major points and doesn't serve the people of this state."

Greyhound and Trailways compete head-to-head in some areas of the state--between Atlanta and Macon is one example—but their runs are generally separate, said Horace Hartley, the PSC's director of transportation rates and services.

Both carriers have been losing money on their Georgia operations, but Greyhound has moved closer to the break-even point by dropping 20 percent of its runs, Hartley said.

The Trailways passenger rate increase, expected to go into effect next month, will increase the company's annual revenues by $528,000, but intrastate rates will remain below interstate levels. However, package rates will increase 28 percent to reach interstate charges.

With the increase, Trailways passenger service from Atlanta to Albany, for example, will rise from $15.45 to $18.55 one way. Had Greyhound's request been granted, its one-way bus service from Atlanta to Columbus, for example, would have gone from $10.25 to $12.30.

Greyhound probably will appeal to the Interstate Commerce Commission the PSC decision to deny annual increases of $647,000 in passenger revenues and $156,000 in express package rates.

Bus line attorney Ted Forbes Jr., who did not attend the special called PSC meeting, said later he could not say for certain that the company would appeal.

APPENDIX K

STATEMENT OF WILLIAM L. MCCRACKEN, SENIOR VICE PRESIDENT, GREYHOUND LINES, INC.

Greyhound has given a great deal of thought to Trailways' proposal, in conjunction with a broader, on-going analysis of pricing in a deregulated, dramatically changing environment.

Because we view this rate meeting as being far more important than general increase meetings in the past we have reduced our views to a written presentation to insure that they are clear and understood.

We are as seriously concerned as the proponent and the rest of the Rate Committee is about the seriousness of the financial condition of the regular-route bus industry. Our concern is as great as yours. But this only makes it more important that we not be blinded by short term solutions. A long term perspective and long term solutions are necessary because the bus industry is at one of the most critical junctures in its existence. It is worthwhile to take a moment to review the dramatic changes we are experiencing because they are factors to be considered in reaching a position on the general increase proposal before this Committee.

Bus deregulation is of course at the top of the list. While the jury will not be in for some time the early results are an indication of things to come.

First, the number of regular-route applications, 171 through July 7, is substantial. The routes being sought, particularly in the short and medium distance city pair markets, are numerous, and these are generally lower cost carriers, carriers with costs per mile 25 percent to 50 percent below those of established carriers. Many of these new carriers will not be NBTA members and the uniformity in pricing we have known may be a thing of the past. This clearly will impose ceilings on medium and short haul pricing for established carriers.

Second, extensive preemption of state rate regulation already is allowing carriers to take long overdue increases in intrastate prices. This means that over time intrastate passengers will begin to pay the cost of the service they use. It also means that interstate passengers will stop subsidizing intrastate travellers.

Third, with rate preemption, we can get away from the practice of raising interstate prices to meet revenue needs because that was easier than fighting long and often fruitless battles in state PUC's.

Intermodal competition has been changing rapidly in recent years also.

The private auto is 30 percent more fuel efficient than it was a few short years ago; people are buying cars again; fuel is available and its cost has stabilized, in fact in real dollars it has declined; and in critical areas of the country, such as California, intercity highway auto travel is up dramatically. Since our principal customer has access to an auto and uses auto not bus on seven or eight of every ten trips, this means we must be conscience of the relative cost of auto versus bus travel.

Airlines as competitors today, compared to five or ten years ago, are as different as night and day. They promote their fares as "cheaper than bus;" they cut fares below bus fares; they have invaded the classic bus markets, 100—300 miles; and they have been successful. I needn't dwell on this. But it does mean we must not price ourselves out of the market we serve best—up to 500 miles.

Applicability of 20 percent increase in standard fares. As best as we can determine a 20 percent increase in standard fares would be applicable to less than 20 percent of our traffic. This results when you subtract out traffic moving under maximum one-way and round-trip fares, other excursion fares, and intrastate traffic. So in fact if there were no diminution we are talking a 4 percent increase in passenger revenue overall.

And what does this 20 percent consist of, where today the passenger is paying the full standard fare, not an excursion fare. Basically they are the standard one-way fares which often are too high today. By too high, we mean 17 cents, 18 cents, 20 cents, even as high as 24 cents per mile (some examples are attached).

If we haven't already priced ourselves out of these markets, a 20 percent increase will accomplish that. A 20 percent increase on a 20 cents a mile fare, making it 24 cents per mile, could cause substantial diminution in traffic. Don't forget we have already raised these prices 19 percent since July 1, 1982. Twenty percent on top of that would be a 43 percent cumulative increase in 15 months. The end result could be that the proposal would actually produce far, far less than a 4 percent increase in revenue. Parenthetically it is worth considering the reaction of our passengers when they hear we are increasing fares 20 percent.

It is obvious that a 20 percent increase would not help us achieve additional revenue. With diminution in effected traffic and the possibility of other passengers deserting bus because of a perception that we are raising all fares, a 20 percent increase could well have an overall negative impact on revenue.

The proposal clearly recognizes the depressed condition of our industry. Without improvement in the bottom line we cannot invest in buses and facilities. Without that improvement, our customers will suffer with us as we curtail service. Unfortunately these customers have options that can exercise either because we offer less service or our prices are too high.

But the 20 percent proposal is not the answer to our revenue needs nor the correct method of addressing the marketplace. It offers a short term, quick fix for the cash hungry. And even that cash may be illusory because of the narrowness of its applicability.

At Greyhound we believe those objectives can best be achieved by companies that are consumer driven—and consumer sensitive. From our position as a consumer driven company, we oppose any effort to raise general rates.

The current marketplace will not accept such action because it will widen the distance between inter and intrastate rates; the application of a general increase would distort the charges for long haul and short haul service; our experience in price elasticity indicates such an increase would cause a further reduction in a very precious market—full fare paying customers, and, in conclusion, such action would be inconsistent with the current phase of disinflation that is taking place in the marketplace.

Greyhound cannot support the proposal. But we recognize, painfully in fact, as does the proponent that a remedy is needed. Revenues are insufficient. What is the answer. We think the answer is clearly a need to reduce the depth of discounting in excursion fares—or promotional and innovative fares if you will.

Clearly the pricing strategies, in particular deep discounting, followed by this industry in the past two years have been unsuccessful.

We have increased prices more than we should have in the short and medium distance interstate markets.

We have decreased prices more than necessary in the longer distance markets.

And we have instituted promotional fares at such deep discounts that a doubling in passengers would be necessary to preserve the same net income.

There are many reasons for what we have done and I will discuss some of them momentarily.

But up front we need to review the results of our efforts.

Our passenger traffic has been stagnant if not down since the 1979 energy crisis. Pasenger revenue is down also, not only after discounting price increases, but in gross dollars also. And our earnings have been severely depressed.

Let's look at the latest figures—the NBTA Study Group results for the first quarter of 1983.

Intercity passengers down 7.6 percent over 1982, which itself was down 8.7 percent over 1981. In the 1983 quarter, the Study Group handled 14,439,000 passengers, 2,886,000 less than in 1981. That is a 16.7 percent decline in two years. Comparing the 1983 first quarter with 1982, we see passengers down 6.1 percent at Trailways Inc., 7.7 percent at Carolina Coach, 10.9 percent at Jefferson, 6.5 percent at Adirondack, 28.8 percent at Pacific Trailways, 18.8 percent at Indian Trails, 25.9 percent at M.K. & O., 13 percent at Martz Trailways, and 8.7 percent at Greyhound.

Study Group passenger revenue similarly declined from $192,450,000 in the first quarter of 1981 to $183,090,000 in 1982 and to $172,040,000 in 1983. A decline of $20,410,000 or 1.6 percent. And bear in mind the substantial increases that have occurred in standard fares during that time. If those are considered the decline is even greater.

And where was net operating income. During the first quarter of the two year period Study Group losses doubled from a loss of $15,517,000 in 1981 to a loss of $27,946,000 in 1983's first quarter.

If full year figures are used, the ICC reported that the 10 largest Class I carriers had net operating income in 1982 of $6,949,000 compared to $48,344,000 in 1981.

It doesn't take too much analysis with numbers like these to realize that our pricing strategies have not been successful.

Where have we gone wrong? First there are some basic rules for successful discount pricing.

1. It should increase revenue, in other words generate cash.
2. It should attract new customers, and more trips from existing customers.
3. It should increase profitability.

And Greyhound believes in discount programs which can achieve those objectives. We truly believe that a well conceived, properly priced, and carefully monitored discount program can be used in increased traffic and strengthen profits.

Unfortunately what we have experienced with discount pricing fails each test of a productive discount.

1. Our revenue and business is down.
2. We are not attracting new customers.
3. Discount fares have destroyed earnings.

We have also ignored some other elementary lessons of the past.

1. Price has minimal leverage because the lowest price is almost universally matched, consequently market share is unaffected by price.

2. Unlimited price elasticity is non-existent therefore there is only so much market stimulation possible from discount prices. We have repeated evidence in recent years that 50 percent discounts in bus fares stimulate only minor ridership increases but they dramatically lower the yield on existing traffic.

3. We lack the key ingredient to a successful discount program—control of distribution. Airlines control distribution through a reservation system, early purchase requirements, and other restrictions. We can't.

One of the most successful of the airlines under deregulation has been U.S. Air. Its chairman and president, Edwin Colodny, put it better than we can. He said:

"Management must be willing to charge prices sufficient to provide an operating margin adequate to meet all of the normal fixed requirements, yet leave a cushion for tomorrow. Several ailing airlines (in his words) can trace their problems to low fares, either self-inflicted or induced by new competition." (Pittsburgh Business Journal August 23, 1982)

If we are to return to sane pricing we must know our market and our customers.

The proponent of the general increase adheres to the view that the future of the bus industry lies in attracting long haul passengers. This is obvious from its espousal of deep discount maximum one-way and round-trip fares and the passenger rate scale it proposed, and this Committee rejected on May 20, 1983.

We disagree with this view of our market. Everything we have seen and the extensive research we have done indicates conclusively that our future is in the up to 500 mile market. Beyond that we cannot compete in transit time and frankly we cannot afford to compete in price. Many airlines today have a cost per seat mile less than bus.

In the 750, 1,000, 2,000 mile markets people don't ride us because we are cheaper than air or because we meet the airline fare. We firmly believe that the person using bus for those distances is doing so primarily because of reasons other than price. Price will only become important to this segment when our price is substantially higher than the airline fare.

What is the answer to our industry's obvious revenue needs? The answer to us is obvious. We are under pricing much of our product—that large percent that rides on maximum one-way, maximum round-trip, and other deep discount promotional fares.

We need to take a lesson from the airlines which just now are coming out of a frightful and frequently irrational fare war of several years' duration.

They are raising and limiting the availability of discounts.

After reviewing this matter in depth and trying to learn from our experience in recent years, Greyhound has concluded that a general increase is not the answer for us, or, for the industry.

We propose—and this proposal has been given to Chairman Harlow this morning—that we:

Establish uniformly—First, a ceiling on the maximum one-way fare of $149 for interline application and $139 for local application.

And second, establish a ceiling on the maximum round-trip fare of $259 for interline application and $239 for local application.

Our proposal will be mailed to the membership, however, we have copies for those in attendance.

Between	And	Rand McNally Miles	OW Std Fare	CPM
Milwaukee, WI	Indianapolis, IN	270	$ 42.00	15.6
Milwaukee, WI	Cleveland, OH	435	65.30	15.0
Pittsburgh, PA	Louisville, KY	393	72.60	18.5
Chicago, IL	Louisville, KY	297	48.75	16.4
New York, NY	Portland, ME	317	57.05	17.6
New York, NY	Norfolk, VA	365	56.15	15.4
New York, NY	Baltimore, MD	199	36.40	18.3
Detroit, MI	Indianapolis, IN	284	48.70	17.1
Nashville, TN	Indianapolis, IN	283	49.15	17.4
Atlanta, GA	Memphis, TN	382	60.15	15.7
Louisville, KY	Memphis, TN	378	57.65	15.3
El Paso, TX	Lordsburg, NM	162	27.65	17.1
Tucson, AZ	Lordsburg, NM	148	32.60	22.0
Boston, MA	Hartford, CT	107	19.30	18.0
New London, CT	Providence, RI	53	10.55	19.9
Worcester, MA	Hartford, CT	51	14.30	28.0
Boston, MA	Hartford, CT	107	19.30	18.0
Springfield, CT	Hartford, CT	29	5.70	19.7
Philadelphia, PA	Wilmington, DE	36	6.70	22.3
Beaumont, TX	Lake Charles, LA	59	10.50	17.8
El Paso, TX	Las Cruces, NM	44	8.05	18.3
Washington, DC	Fredericksburg, VA	48	8.70	18.1
Washington, DC	Winchester, VA	71	12.75	18.0
Washington, DC	Richmond, VA	108	16.40	15.2
Washington, DC	Frederick, MD	44	9.85	22.4
Washington, DC	Cumberland, MD	136	25.35	18.6
Washington, DC	Hagerstown, MD	67	14.40	21.5

Between	And	Rand McNally Miles	OW Std Fare	CPM
Jacksonville, FL	Waycross, GA	77	$ 12.75	16.6
Jacksonville, FL	Valdosta, GA	118	20.50	17.4
Tallahassee, FL	Dothan, AL	109	19.95	18.3
Memphis, TN	Little Rock, AR	136	21.00	15.4
Memphis, TN	Greenwood, MS	132	24.55	18.6
Memphis, TN	Tupelo, MS	106	18.05	17.0
Memphis, TN	Sikeston, MO	141	26.95	19.1
New Orleans, LA	Gulfport, MS	74	11.70	15.8
Savannah, GA	Charleston, SC	105	17.10	16.3
Louisville, KY	Cincinnati, OH	102	17.10	16.8
Louisville, KY	Evansville, IN	125	25.00	20.0
Louisville, KY	Knoxville, TN	252	40.85	16.2
Louisville, KY	Indianapolis, IN	113	20.30	18.0
Louisville, KY	Nashville, TN	175	26.70	15.3
Cincinnati, OH	Lexington, KY	83	13.95	16.8
Cincinnati, OH	Ft. Knox, KY	136	23.75	17.5
Cincinnati, OH	Indianapolis, IN	108	20.30	18.8
Erie, PA	Cleveland, OH	109	18.05	16.6
Erie, PA	Buffalo, NY	93	16.55	17.8
Nashville, TN	Florence, AL	117	20.45	17.5
Nashville, TN	Bowling Green, KY	57	10.90	19.1
Nashville, TN	Hopkinsville, KY	74	14.50	19.6
Birmingham, AL	Columbus, GA	146	25.45	17.4
Birmingham, AL	Tupelo, MS	142	24.20	17.0
Charlotte, NC	Columbia, SC	94	17.10	18.2
Charlotte, NC	Knoxville, TN	230	28.00	16.5
Charlotte, NC	Augusta, GA	166	28.70	17.3

Between	And	Rand McNally Miles	OW Std Fare	CPM
Evansville, IN	Hopkinsville, KY	85	$ 17.60	20.7
Evansville, IN	Clarksville, TN	112	21.95	19.6
Evansville, IN	Mt. Vernon, IL	90	22.35	24.8
Evansville, IN	Paducah, KY	110	19.70	17.9
Evansville, IN	St. Louis, MO	171	30.00	17.5
Evansville, IN	Nashville, TN	159	2900	18.2
Detroit, MI	Toledo, OH	62	11.75	19.0
Detroit, MI	Ft. Wayne, IN	167	27.65	16.6
Chicago, IL	Indianapolis, IN	190	30.90	16.3
Chicago, IL	Benton Harbor, MI	99	19.05	19.2
Chicago, IL	Holland, MI	152	29.10	19.1
Chicago, IL	Gary, IN	35	5.50	15.7
Chicago, IL	Grand Rapids, MI	180	31.70	17.6
St. Louis, MO	Carbondale, IL	98	17.90	18.3
St. Louis, MO	Paducah, KY	194	29.70	15.3
Kansas City, MO	Lawrence, KS	46	7.50	16.3
Kansas City, MO	Omaha, NE	183	27.65	15.1
Kansas City, MO	Des Moines, IA	204	32.50	15.9
Kansas City, MO	Topeka, KS	72	11.70	16.3
Kansas City, MO	Junction City, KS	127	22.05	17.4
Kansas City, MO	Salina, KS	175	29.75	17.0
Salt Lake City, UT	Rock Springs, WY	186	38.00	20.4
Salt Lake City, UT	Burley, ID	185	34.15	18.5
Salt Lake City, UT	Twin Falls, ID	220	37.35	17.0
Salt Lake City, UT	Wells, NV	186	36.65	19.7
El Paso, TX	Alamagordo, NM	86	14.35	16.7
El Paso, TX	Carlsbad, NM	166	29.05	17.8
San Diego, CA	Yuma, AZ	173	26.20	15.1
Las Vegas, NV	Barstow, CA	155	29.70	19.2
Las Vegas, NV	Cedar City, UT	161	32.60	20.2
Las Vegas, NV	Kingman, AZ	102	20.75	20.3
Las Vegas, NV	Needles, CA	106	20.45	19.3

APPENDIX L

A PROPOSAL FOR FEDERAL LEGISLATIVE DEREGULATION OF THE INTERCITY BUS INDUSTRY

FEBRUARY 1979

Greyhound Lines, Inc.
Greyhound Tower Room 1615
Phoenix, Arizona 85077

SUMMARY

In the following pages Greyhound explains why it is advocating federal legislation to totally deregulate the intercity bus industry.

Greyhound proposes a five-part, totally interdependent, legislative solution to the severe problems thrust upon the intercity bus industry and its customers by the misguided piecemeal deregulation policies of the Interstate Commerce Commission.

The five parts are:

- freedom of entry
- freedom of exit
- abolition of Interstate Commerce Commission jurisdiction over bus industry pricing with limited continuation of rate bureaus for joint-line rates
- federal preemption of state jurisdiction over rates, routes, or service of carriers operating in interstate commerce
- transferal of remaining Interstate Commerce Commission responsibilities over the intercity bus industry to appropriate agencies

Adoption of this proposal will result in a financially healthier industry better able to serve the nation. It will also place the bus industry on a common level with its competitors, air, rail, and auto, all of which are virtually free of restrictive regulation.

I. INTRODUCTION

For forty years the interpretation and implementation of the Federal Motor Carrier Act by the Interstate Commerce Commission was consistent with the Congressional objective enunciated in the National Transportation Policy (49 U.S.C., Section 10101) "to promote safe, adequate, economical, and efficient transportation" and "to encourage sound economic conditions in transportation, including sound economic conditions among carriers".

The result was a mutually beneficial partnership of the regulator and the carrier — with the carrier fulfilling the historic duty of a common carrier not shared by other business endeavors to provide a plethora of service, profitable and unprofitable, serving all, always subject to government oversight — while the regulator maintains proper protections against unnecessary and destructive competition — exisited in proper and fruitful balance from 1935 until the mid-1970's. At that time and to this date, the regulator — the Interstate Commerce Commission — has nullified the partnership by embracing a policy of uneven and ill-considered administrative deregulation. The result is that carriers today are shouldering many of the burdens of deregulation but realizing few of the benefits.

The ICC's commitment to eliminating entry controls while simultaneously restricting managerial discretion among carriers has been a major contributor to instability and financial decline in the bus industry.

The irony is apparent when we consider that the regulatory policy enacted by Congress in 1935, and implemented by the ICC over the next forty years, was a major factor contributing to the development of the most extensive and finest intercity bus system in the world.

In recent years, the ICC has embarked upon an ill-advised philosophy of re-regulation which is hastily resulting in the dismemberment of meaningful and productive regulation while also contributing to the substantial deterioration of the financial strength of the industry.

II. A LEGISLATIVE SOLUTION IS REQUIRED

The imbalance created by the ICC must be redressed, but the Commission as constituted will not provide the remedy. The Commission's Chairman is committed to an aggressive effort to fully eliminate entry controls while tightening ICC jurisdiction over exit, service, rates, and managerial discretion.

The only alternative source of relief is our nation's Congress. Although we firmly believe that the regulatory balance achieved between 1935 and 1975 is a principal reason for the development of the world's best intercity bus transportation system, we are realistic and recognize that there will not be a return to that form of regulation in the foreseeable future. At the same time, we sincerely believe that the piecemeal deregulation we are presently experiencing is producing the worst form of deregulation from the standpoint of both the consumer and the carrier.

III. A LEGISLATIVE PROPOSAL

Greyhound advocates total deregulation embracing a five-part, totally interdependent, legislative solution to the severe problems thrust upon the intercity bus industry by the actions of misguided Interstate Commerce Commission piecemeal deregulation.

The five parts are:

- freedom of entry
- freedom of exit
- abolition of Interstate Commerce Commission jurisdiction over bus industry pricing with limited continuation of rate bureaus for joint-line rates
- federal preemption of state jurisdiction over rates, routes, or service of carriers operating in interstate commerce

- transferal of remaining Interstate Commerce Commission responsibilities over the intercity bus industry to appropriate agencies.

The program we advocate is confined to the intercity bus industry. We do not suggest that is has applicability to the trucking industry, in fact, a cornerstone of our proposal is that bus and truck must be considered separately by Congress.

IV. THE TIME IS APPROPRIATE FOR A LEGISLATIVE SOLUTION

Calls for legislative deregulation of the motor bus industry are not new. What is demonstrably new, is (1) a political and economic climate which substantially increases the probability that legislation will be enacted, and (2) the administrative actions of the ICC in the past two years which, while perhaps well-intentioned, have endangered the financial condition and engendered more harm than good in the intercity bus industry.

During both the Nixon and Ford administrations, proposals were made to legislatively reform the motor carrier industry through substantial lessening of regulation. The railroads received some tentative relief in the Railroad Revitalization and Regulatory Reform Act of 1976. In 1978 Congress enacted the Airline Deregulation Act which eliminates Civil Aeronautics Board regulatory control on a phased basis; immediately and significantly relaxes entry rules; provides meaningful rate flexibility both upward and downward; preempts state jurisdiction; and deregulates the air charter and tour business. Congress similarly decontrolled air cargo service over a one-year transition period.

Immediately prior to Congressional action and during the time Congress was debating the issue of airline deregulation, the Civil Aeronautics Board undertook significant and uneven deregulation steps which are dramatically similar to the actions of the ICC. The CAB, like the ICC, opted for virtual freedom of entry, without parallel relaxation of rate-setting and exit policies. Many airlines concluded, as bus operators are now doing, that the certainty of legislative solutions was preferable to unpredictable and arbitrary administrative action.

On January 16, 1979, the National Commission for the Review of Antitrust Laws and Procedures adopted its Final Report. With respect to motor carriers it concluded that the industry is capable of effective performance without a comprehensive scheme of regulation and antitrust immunity and therefore the Commission recommended:

1. Repeal of the Reed-Bulwinkle Act which confers antitrust immunity on collective ratemaking;
2. Freedom of entry, after a brief transition period, to all who can operate safely and responsibly;
3. Repeal of Interstate Commerce Commission authority over rates; and
4. Repeal of Interstate Commerce Commission jurisdiction over mergers.

On October 24, 1978, in conjunction with his announcement of voluntary wage and price guidelines, President Carter emphasized that lessened government regulation of American business would be a critical part of his program. In particular, he indicated a desire to pursue deregulation of surface transportation. The President fulfilled this commitment when he transmitted his Budget to congress on January 22, 1979:

> "The administration will propose legislation in 1979 to deregulate the Nation's . . . inter-city bus industr(y)." *The United States Budget in Brief, Fiscal Year 1980*, page 42.

Support for legislative deregulation also comes from such diverse economic and political extremes as Senator Kennedy and the National Association of Manufacturers.

V. WHY LEGISLATIVE, NOT ADMINISTRATIVE, ACTION IS REQUIRED

The National Commission for the Review of Antitrust Laws and Procedures, in its January 16, 1979, report calling for the end of comprehensive motor carrier regulation, emphasized that this must be accomplished legislatively, not administratively, if the changes are to be prompt and meaningful. The report noted that administrative change is constrained by the Interstate Commerce Act and the results are subject to such unpredictable variables as Commission membership and court review.

In his Budget message of January 22, 1979, President Carter categorically declared that this year — 1979 — his administration has opted for the legislative avenue as the means for attaining deregulation of the intercity bus industry.

Greyhound and Trailways, the carriers having by far the greatest investment in terminals, shops, buses and the largest number of potentially affected employees and shareholders, both forcefully advocate legislation, not administrative action, as the route to be pursued.

While Chairman O'Neal asserts the ICC possesses the in-house expertise to deregulate effectively *(New York Times*, January 7, 1979, pages F-1, 7), we submit that the Commission's recent record supports the contrary conclusion. The Commission (1) possesses virtually no meaningful expertise with respect to the intercity bus industry; (2) has chartered a predetermined course toward partial deregulation before undertaking an analysis of the carriers affected and the logical consequences; and (3) is adamantly opposed to undertaking a study of the probable economic effects of deregulation. Despite the plethora of ICC administrative actions which have created a patchwork quilt of increased regulation and expansive deregulation actions, the Commission's Chairman dismisses the need for such a study saying, "To do that would be a massive undertaking that probably is not necessary." *(New York Times, supra)* This despite the fact that O'Neal has announced that he intends to substantially deregulate the motor carrier industry within eighteen months. *Traffic World*, January 29, 1979, pages 28-30.

Is it any wonder that carriers today are fearful of the philosophy and drift of the Commission?

VI. THE DESTRUCTION OF MEANINGFUL ENTRY CONTROLS BY THE INTERSTATE COMMERCE COMMISSION

The ICC has approached lessening of entry requirements from several perspectives, including decisions in individual cases which thereafter are precedent for new policies, rulemaking, and informal but nonetheless binding Policy Statements. The result has been the current granting of at least 97% of all applications and a gigantic increase in applications by those seeking to share in this largess.*

The Commission, as noted, has addressed the issue of entry controls on a number of fronts. Although individually many of these actions have not substantially lessened entry, the collective impact has been to essentially allow free entry. The Commission has decontrolled entry entirely in some areas while in other areas it has reduced the entry process to a meaningless series of ministerial steps leading to the predictable grant of operating authority.

The carefully constructed tests for the balancing of the interests of existing carriers against the proposals of new applicants, while weighing the public interest, are no more. In two short years the Commission has buried the criteria developed over forty years for judging the applications of prospective entrants.

In 1936, the first full year of federal regulation of the intercity bus industry, the Commission gave flesh to the statutory test that common carrier certificates could be granted only if required by "public convenience and necessity". In *Pan-American Bus Lines Operation*, 1 M.C.C. 190 (1936), the Commission enumerated three criteria to be evaluated in motor carrier application proceedings:

- whether the new operation will serve a useful public purpose, responsive to a public demand or need
- whether this purpose can and will be served as well by existing carriers
- whether it can be served by applicant without endangering or impairing the operation of existing carriers contrary to the public interest.

Three years later, in 1939, the Commission established a further consideration:

- whether the advantages to those of the public using the proposed services outweigh the disadvantages, real or potential, to existing services that may result. *All-American Bus Lines, Inc.*, 18 M.C.C. 755 (1939).

In the application of these tests, the Commission accorded great weight to the adequacy of existing service and repeatedly held that existing carriers were entitled to all the traffic they could handle adequately, efficiently, and economically within the limits of their authority before a new competing service would be authorized.

For forty years the Commission rarely departed from *Pan-American* and *All-American*. During the same period, the intercity bus industry grew, strengthened, and developed the best passenger bus system in the world.

In 1976, "the Commission's attitude toward the benefits of competition and the protestant's burden of proof . . . significantly changed, this is partly as a result of a change in Commission membership . . . This in turn brought about a more liberal view of motor carrier regulation and a belief in relaxing entry controls." Leland, D., Branch Chief, Interstate Commerce Commission, *The Emergence of Competition as a Factor in Motor Common Carrier Licensing*, 6 ICC Prac. J. 56, 59-60, Nov.-Dec. 1978.

In *P. C. White Truck Line, Inc., Extension — Atlanta*, 129 M.C.C. 1 (1978), the Commission said the potential benefits of competition are a sufficient basis upon which to grant an application.

In another 1978 case, *Liberty Trucking Co., Ext.-General Commodities*, 130 M.C.C. 243 (1978), the Commission addressed itself to the third of the *Pan-American* criteria and held that an application would be granted unless a protestant could show that the result would be the diversion of a significant portion of its revenues and a possible inability to continue operations. Even then the Commission said the benefits of competition might still mandate a grant of the authority sought.

In 1978 the Commission also sanctified the "foot-in-the-door" method of entry into the motor bus business. An applicant simply proposes to offer a unique type of service that is not offered by existing carriers, i.e., aged school buses, twenty-passenger buses, etc. The Com-

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*This syndrome was most graphically described by Commissioner Stafford who said, "Everyone knows that it's Christmas at the I.C.C. all year round." George M. Stafford, Commissioner, *A Modest Proposal*, Transportation Law Institute, Vail, Colorado, August 10, 1978.

mission will not restrict the new entrant to providing the unique service proposed. Instead, says the ICC, the existing carriers, having failed to serve the unique market, have abdicated their common-carrier responsibilities, and are subject to censure. The appropriate method of censure is to give the new entrant unrestricted authority. *Ace Transp. Co., Inc. — Charter Operations*, 130 M.C.C. 382 (1978). The successful applicant is not required to offer the unique service it proposed and in fact is free to confine itself to conducting operations identical to those of the existing carriers. Thus, the "foot-in-the-door" characterization.

In the same year, the Commission established the precedent that public support may not even be necessary in major passenger applications (Docket No. MC-346, Sub-No. 7, *Ferdinand Arrigoni)* and lifted restrictions in many ICC certificates of Canadian carriers without a formal proceeding as required by the Administrative Procedure Act.

The Commission's intent is clear.

> "The Commission has in the past two years increasingly interpreted its existing regulations and precedents to favor easier entry . . ." A. Daniel O'Neal, Chairman, ICC, New York City, October 31, 1978.

Contemperaneously with its establishment of new principles in application cases, the Commission has engaged in wholesale lessening of entry standards by the device of rulemaking. In Ex Parte No. MC-121, *Policy Statement on Motor Carrier Deregulation*, the Commission proposes to bury forever the second test established in *Pan-American* which requires consideration of the adequacy of existing services.

The Commission's new standards for protests will make it even more difficult for an existing carrier to participate in an ICC application proceeding. Ex Parte No. 55 (Sub-No. 26), *Protest Standards in Motor Carrier Application Proceedings*, 43 Fed. Reg. 50908 (November 1, 1978).

VII. A LEGISLATIVE PROPOSAL IN DETAIL

A. Freedom of Entry

Although the Commission has undertaken a variety of steps which have significantly lowered entry barriers, the application processing system shows little change. Although 97% of applications are granted, according to the Commission, an applicant must submit extensive documentation with an application; existing carriers continue to protest; the Commission continues to schedule a substantial number of adversary hearings which can last many weeks; decisions are rendered at several Commission levels; interspersed between such decisions the parties file numerous and often lengthy pleadings; and a year or two or three later the application is granted; thereafter to be followed occasionally by court review.

If the eventual outcome is a grant of authority, why do these procedures continue? Simply because the ICC's rules applicable to applications and their processing are detailed, cumbersome, and remain virtually unchanged. Also, existing carriers exercise their right to protest and be heard because of a belief that the Commission listens to protestants or because the protestant's interests fall within the narrow area which remains entitled to protection.

The cumbersome procedures of the Commission serve little legitimate interest in view of the Commission's desire to grant virtually all applications.

Greyhound believes the time has come to eliminate all entry barriers (save those associated with continuing legitimate consumer interests such as fitness, safety, and insurance), and to permit the intercity bus industry to compete more effectively with other modes of passenger transportation. Let the rules of the marketplace which apply to other sectors of the economy, and in particular other modes of passenger transportation, govern the conduct of the bus industry.

It is obvious that the public interest aspect of the bus industry calls for legitimate governmental oversight of carrier fitness, safety, and insurance. Safety is today the responsibility of the United States Department of Transportation and should remain so. Responsibility for assuring that motor bus operators possess appropriate public liability and property damage coverage presently lies with the ICC. This is a duty which likewise should be placed with the Department of Transportation if ICC jurisdiction over the intercity bus industry is terminated.

It would be appropriate to require carriers intending to operate in interstate commerce to offer proof of fitness, safety procedures and insurance coverage to the Department of Transportation and if found satisfactory the carrier would receive authority from the Department to conduct "interstate bus" operations without any geographical or other restriction.

Freedom of entry will permit existing and new carriers to rapidly address service needs without the hindrance and delay of existing application procedures.

B. Freedom of Exit

Freedom of entry has another inevitable aspect, however. A deregulation program which does not also include freedom of exit is an incomplete and inequitable response which would contribute to a rapid deterioration in the nation's intercity bus network. If free market forces are to govern, and carriers are to be allowed to operate in a manner designed to maximize efficiency and profit, then carriers must have the same freedom to reduce or eliminate service as they would under free entry to expand existing service and to inaugurate new service.

Freedom of entry has and will result in increased competition primarily upon those routes and in those markets which existing carriers have found to be profitable. New entrants will not be attracted to routes and markets where the existing carrier operates at a loss and has been required by administrative regulation to continue service. Since it will not be economically feasible for the existing carrier to continue to operate losing services when it is being deprived of profits elsewhere, freedom of exit must be an integral part of any meaningful legislative solution.

Regulation over market exit is generally viewed as a state regulatory matter because many states regulate with great precision changes in bus schedules and their frequency. While this is direct, it must be recognized that ICC regulation indirectly contributes to a carrier's inability to reduce or eliminate unprofitable service. The Alternate Route and Deviation Regulations of the Commission require that carriers provide unneeded service over backroads long ago supplanted by interstate highways, freeways, etc., if the carrier desires to operate over the improved highway. Thus, if a carrier is to provide needed service over the best route, it is faced with a scheme of regulatory blackmail which forces it to provide a fuel wasteful service not required by the travelling public.

Legislation must eliminate these unnecessary burdens and permit carriers the freedom to react to consumer needs and market forces without the heavy hand of waste-producing regulations.

C. Rates

Rate setting freedom is also a necessary part of effective deregulation.

The bus industry exists in a highly competitive environment. Bus companies not only compete with each other, but they compete with Amtrak, which has rate setting freedom; airlines, which have a high degree of freedom now and more to come as mandated by Congress; and the private automobile. Thus, the bus industry is the only mode subject to stringent regulatory oversight.

Has the ICC fulfilled its responsibilities? In recent years the answer is a categoric "no". During the past six years, a period of spiralling costs which have been severely felt by the labor-intensive bus industry, the ICC has denied, reduced, and delayed needed rate relief. Between May 1, 1973 and December 31, 1978, the intercity bus industry filed nine general passenger fare increase requests with the Commission. On six of the nine requests the Commission granted relief only in part. In addition, it delayed implementation in five of the six filings beyond the proposed effective date.

What has the cumulative impact been? In Greyhound's case alone, the revenue irretrievably lost through December 31, 1978, amounted to approximately $110,000,000.

What was the impact on the bus industry? The Commission succinctly said in reviewing industry experience between 1971 and 1976:

> "As a group, Class I carriers have experienced a significant decline in profitability over the past 5 years. Each year since 1972 has seen a deterioration from the previous year's operating income, as increases in revenues have been more than offset by increases in operating costs." *The Intercity Bus Industry, A Preliminary Study*, ICC Bureau of Economics, May 1978, page 61.

The same report noted Greyhound had experienced a similar decline in net operating revenues from $42.1 million in 1974 to $21.1 million in 1976. Although one arm of the Commission discerns the impact of a failure to accord carriers necessary rate increases, the other continues to impede rate change.

In a free market, where competitors are free to enter and exit, where illegal operators are unpoliced, and where competitors are not subject to regulation of rates, the total elimination of ICC rate jurisdiction is appropriate.

Coincidentally, the immunity now existing for certain rate bureau activities should be reduced to embrace only activities that are a necessary adjunct to the establishment and division of joint-line rates and fares.

D. Federal Preemption

Truly meaningful and effective deregulation of the intercity bus industry can only occur if legislation simultaneously terminates all state jurisdiction over carriers which are engaged in interstate operations. Absent such preemption, federal legislation deregulating the bus industry will be greatly frustrated by state action and in the end will be largely ineffective. In fact, a system of federal deregulation and continued state regulation, either uniformly or more than likely on a piecemeal and highly inconsistent state-by-state basis, would weaken the industry and create the ultimate in chaotic instability.

An example shows the effect of federal free entry and continued state regulation. Between New York City and Chicago a bus company handles on the same bus and at the same time passengers in interstate commerce, i.e., crossing state line(s), and intrastate travellers, i.e., total journey within New Jersey, Pennsylvania, Ohio, or Indiana. The former traffic is generally more profitable. With federal freedom of entry, one or more carriers would be free to offer service to interstate travellers and to change their service, schedules, and fares at their whim. The interstate-intrastate carrier would not be able to respond because the state regulatory agencies would, as they do today, exert comprehensive regulatory restraint. Such agencies would reject efforts to reduce schedules because of a concern for service for intrastate passengers. They would act similarly with respect to service and rates.

The profitable subsidizes the unprofitable. When the financial results on the former deteriorate, a carrier in a free market would raise fares on the profitable, reduce service on the unprofitable, or both. Absent preemption, the existing carrier will be placed in an untenable position. It will not be able to raise fares on the interstate traffic because of competition and it will be unable to reduce intrastate service because of continuing state regulatory restraint.

The inequity and impropriety of such a system is obvious.

Preemption is far from new or unique. For many years state jurisdiction over certain rail matters has been curtailed or subject to ICC primacy.

The Airline Deregulation Act of 1978, Section 105(a)(1), specifically deprives states and their agencies and political subdivisions of authority over the intrastate rates, routes, and service of carriers also providing interstate air transportation.

E. Transferal of ICC Responsibilities to Appropriate Agencies

Upon removal of ICC jurisdiction over entry, exit, and rates, the remaining duties are minimal and can appropriately be transferred to other agencies which already have expertise of the subject matter or of the bus industry.

Jurisdiction over securities, reports, and accounting should be assigned to the Securities and Exchange Commision which has exercised such jurisdiction over most United States corporations for forty years.

Review of mergers and acquisitions would become a responsibility for the United States Department of Justice and the Federal Trade Commission.

Bus passengers are entitled to assurance that bus operators hold adequate insurance for personal injury and death as well as property damage. The ICC has exercised this responsibility by establishing minimum insurance coverage limits and requiring carriers to submit proof of insurance to the ICC. This duty should be assigned to the Department of Transportation which already has safety responsibility and is continually more involved in programs affecting the industry such as rural operating subsidies and capital funding for terminals.

One major responsibility that the ICC has, but which it virtually ignores, remains. Carriers not meeting the statutory standards must not be permitted to operate if the travelling public is to be protected against uninsured, unsafe operators. The Commission has the authority today to stop such carriers, of which there are many, but refuses to act in a meaningful manner. With deregulation, this responsibility should be given to an agency with the dedication necessary to achieve compliance with the law. The travelling public is deserving of this protection.

VIII. CONCLUSION

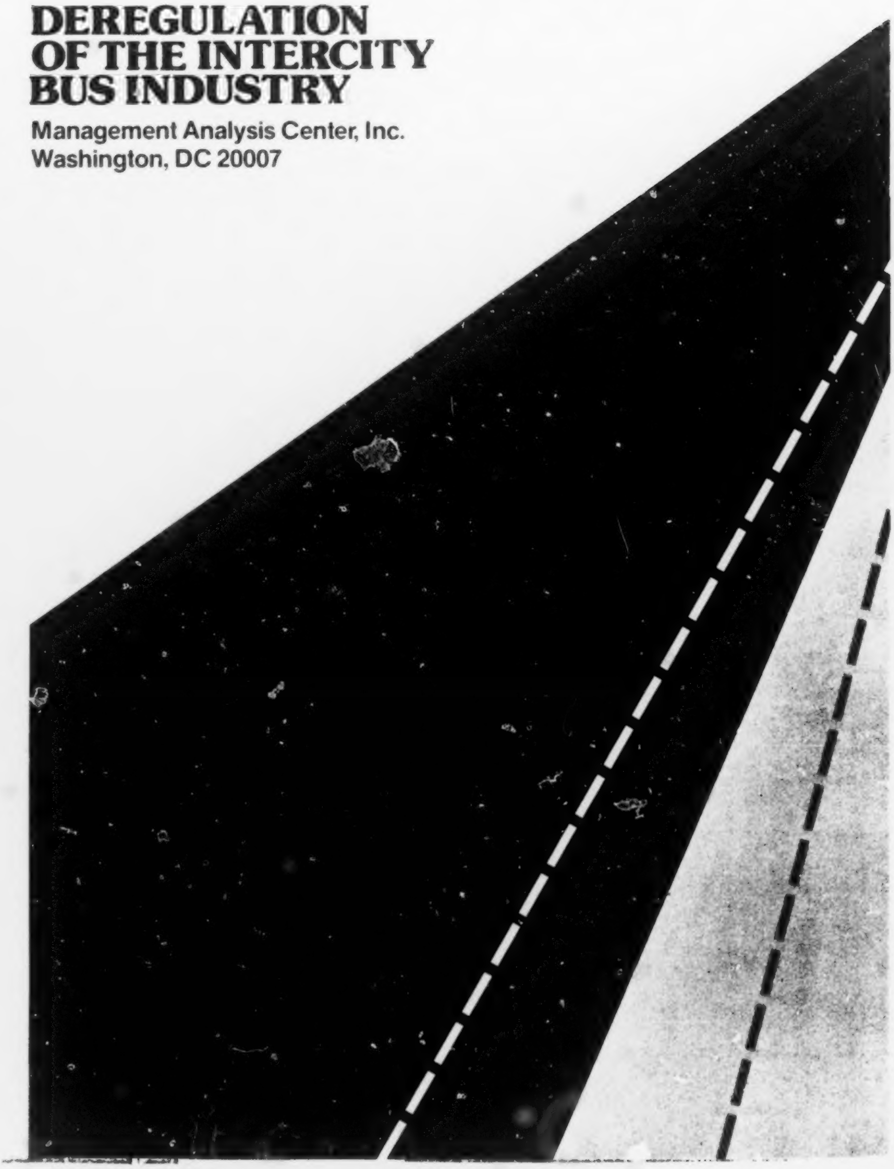
The conclusion is inescapable — that the policies adopted by the Interstate Commerce Commission have resulted in the end of meaningful and productive regulation and a substantial deterioration in the financial condition of the intercity bus industry.

A stronger and more competitive industry will result if legislation consistent with our five-part proposal is adopted.

APPENDIX M

DEREGULATION OF THE INTERCITY BUS INDUSTRY

Management Analysis Center, Inc.
Washington, DC 20007



INTRODUCTION

Management Analysis Center, Inc. (MAC) is the largest faculty-based management consulting firm in the world. Offices are located in five major U.S. cities and overseas. Project teams composed of full-time professional staff and faculty experts provide general management consulting services in the areas of strategic planning; marketing, operations and financial planning; organization structure, systems and culture; and economic research and expert testimony. MAC has a large transportation practice, and has completed more than fifty projects in the above areas for transportation firms in the last several years.

Regulatory consulting is an important part of MAC's economic research and expert testimony work. MAC provides consulting services in the regulatory sphere to private industry, trade and professional organizations, government agencies and public utilities. Faculty and staff collectively have experience before some 20 federal regulatory agencies, 30 state public utility commissions, and numerous congressional committees.

Gayton E. Germane is the 1907 Foundation Professor of Logistics at Stanford University. Professor Germane specializes in the areas of transportation, logistics and business policy. In addition to teaching and directing executive programs in these areas, he has consulted to government and industry, including rail, motor, air and water carriers. He has also testified as an expert witness in federal antitrust, ICC, and congressional committee hearings. Professor Germane was director of transportation policy at the Department of Defense, the director of transportation planning and research at U.S. Steel, and is chairman of the coordinating committee of the Transportation Association of America's Cooperative Project on National Transportation Policy. Professor Germane has authored many books on transportation and logistics, and is associate editor of the *Logistics and Transportation Review*.

MAC INC.

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PREFACE

From Eileen Friars
Vice President
Management Analysis Center, Inc.

We are pleased to present our report, **Deregulation of the Intercity Bus Industry.** While the bus industry has been studied previously, our objective in preparing this report has been to clarify the issues surrounding deregulation and to provide new insights based on the experience of deregulation that has already been effected in this and other industries. The report discusses:

- The nature of the passenger transportation industry.
- The concept of deregulation and the issues surrounding it.
- Options for deregulation in the intercity bus industry.

We believe that the study will be a useful tool for those who wish to learn more about the intercity passenger transportation industry. The data contained in this document will provide a sound basis for informed, accurate decisions concerning the future of the intercity bus industry and its deregulation.

The study required nearly three months of intensive efforts by our staff, who reviewed and analyzed several hundred documents and contacted industry association officials for additional information. The key members of our project team in addition to myself were: Gayton Germane, Professor of Logistics at Stanford University, and Peter T. A. Bower, Senior Associate, who served as Project Manager.

Management Analysis Center, Inc. (MAC), is pleased to have been associated with this analysis of the bus industry and the subject of its deregulation. MAC is a faculty-based consulting firm that comprises over 100 professional staff members and 200 professors of business and economics. Analyzing the impact of complex change on industries as well as individual firms is a major focus of our practice. Our previous experience in regulated industries, especially the rail and trucking industries, was particularly valuable in preparing this analysis. We commend Greyhound Lines, Inc., for sponsoring this timely study of the issues surrounding deregulation and for enabling us to provide a fresh, objective look at the intercity bus industry and its future.

Washington, DC
January 6, 1981

EXECUTIVE SUMMARY

Since 1935, federal and state authorities, while differing somewhat in their emphasis, have regulated both the economic and noneconomic aspects of the bus industry. The Motor Carrier Act of 1935 authorized the Interstate Commerce Commission (ICC) to regulate interstate bus and truck transportation. State regulatory commissions retained jurisdiction over intrastate bus operations. The economic aspects of regulation include entry, exit, and fares. Noneconomic aspects include factors such as equipment design, and safety. This report focuses most of its attention on the economic regulation of the industry.

With the substantial deregulation of the air, truck, and rail industries that has occurred in the last few years, the continued regulation of the intercity bus industry stands out as a vestige of regulatory policies of past eras. Recognizing this, the ICC, the American Bus Association (ABA), and individual industry members have all issued proposals to deregulate the bus industry, and congressional leaders have indicated that bus legislation will be considered in 1981. To provide a framework for decision-making on this important issue, one must consider economic analyses of both the intercity bus industry and the passenger transportation industry of which it is a part, as well as look closely at the public interest element. A brief summary of our findings in each of these areas is presented below, followed by our conclusions on deregulation of the intercity bus industry. More detailed analyses comprise the following sections.

THE PASSENGER TRANSPORTATION INDUSTRY

- Passenger transportation in the U.S. includes air, rail, auto, and bus transportation. All of these modes compete with one another.
- Of 1979 passenger operating revenues of $27.3 billion, domestic air represents $22.8 billion, local transit $2.4 billion, intercity bus $1.4 billion, and rail $0.7 billion. Since 1970, the percentage of the total represented by each mode has changed considerably, with air growing from 69% to 84% of total passenger operating revenues and bus declining from 9% to 5%.
- Intercity passenger transportation has experienced only slight real growth since 1970. The intercity bus industry, however, has grown even less than passenger transportation as a whole, and the number of passengers carried by intercity bus has actually declined.

Compound Annual Growth 1970-1979

Measure	Intercity Passenger Transportation (a)	Intercity Bus Industry
Passenger Operating Revenues (b)	14.4%	6.7%
Passenger-Miles	3.1%	0.6%
Passengers (b)	1.3%	(1.5%)

(a) Intercity statistics exclude local transit.
(b) Excludes auto.

ECONOMICS OF THE INTERCITY BUS INDUSTRY

- The bus industry includes 1,150 carriers recognized by the American Bus Association (ABA). In 1979, 60 of the firms were categorized by the ICC as Class I carriers, with annual revenues over $3 million; 46 of these were engaged primarily in intercity service. The remainder were Class II and Class III carriers, with annual revenues under $3 million.
- Within the intercity bus industry two carriers, Greyhound

Lines, Inc., and Trailways, Inc., received approximately 52% of the revenues received by all ABA-recognized carriers, carried 23% of the industry's passengers, and operated roughly 40% of the industry's passenger-miles.

- The three major sources of revenues for the bus industry are intercity and local regular-route passenger service, charter and special/tour passenger service, and package express. Charter and special/tour operations are an increasingly important factor in the business, representing 30% of total revenues and 51% of passengers in 1979.
- While Class I carriers account for the major portion of revenues and passengers from regular-route operations, Class II and Class III carriers account for the bulk of revenues and passengers from charter and tour operations. Although Class I intercity carriers received the bulk of total passenger revenues, they accounted for only 37% of total passengers, indicating the importance of smaller carriers in providing passenger transportation.
- The financial performance of carriers within the industry has deteriorated during the last decade. From 1970 to 1979, operating margins have declined from 11.5% to 4.8% for Class I intercity carriers, and from 9.9% to 5.4% for the ABA recognized industry as a whole.
- Financial performance has varied substantially among Class I carriers. The largest carriers are not the most profitable; in fact, the relatively high variability of financial performance in the industry indicates that carriers with different characteristics can operate profitably.
- With low fixed costs and no large economies of scale, the intercity bus industry lacks significant economic barriers to entry. Smaller carriers are effective and profitable competitors.
- Bus carriers encounter some of their most serious competition from other modes of transportation — the private auto, the deregulated airlines, and the heavily subsidized passenger train network. The intercity bus industry's share of passenger operating revenues, passenger-miles, and passengers has declined significantly since 1970.
- With average revenues from all services of $21.5 million in 1979, Class I intercity carriers are very small in comparison with domestic certificated air carriers, with average air carrier revenues of $559.5 million, and Amtrak, with $321 million in revenues.
- In recent years, the deregulated airlines and subsidized passenger trains have reduced, and in some cases eliminated, the advantages of lower fares previously enjoyed by the bus industry.

DEREGULATION EXPERIENCE TO DATE

- In the two-year period following deregulation of the airline industry (October 1978), airline traffic, load factors, and service levels (in terms of total weekly departures and number of seats) increased. While fares increased 6%, airline operating costs increased 30% and the consumer price index increased 20%.
- Both trucks and rail freight were deregulated in 1980, but it is too early to measure the effects accurately.
- The intercity bus industry has been deregulated in Florida since July 1, 1980. While it is still early to judge results, preliminary indications are positive. There has been a surge of new ridership on some bus lines where fares were cut and routes added. Overall, carriers are offering increased scheduled service, new charter companies are forming, and charter fares are being reduced.

THE PUBLIC INTEREST

- The public interest includes a number of potentially conflicting goals that must be balanced: economic efficiency, service, industry viability, reasonable rates, reduced public/social costs, energy conservation, protection of the environment, and safety.
- Service to small communities in a deregulated environment has been raised as a concern, even though over 70% of bus riders reside in Standard Metropolitan Statistical Areas. The recent experience in Florida and the experience with airline deregulation suggest that deregulation does not lead to significant problems of abandonment, and, overall, service appears to have increased. Rural voters in Arizona voted overwhelmingly for bus deregulation in a referendum held in November 1980.

CONCLUSIONS AND POLICY RECOMMENDATIONS

- The structure of the intercity bus industry appears to be well suited to the free market that deregulation would encourage. Indeed, a continuation of current regulation could jeopardize the ability of intercity bus carriers to compete with deregulated competitors and, in the long run, undermine the financial health of the industry.
- A comprehensive approach to deregulation is appropriate and desirable. It would include the following aspects:
  - free entry to encourage maximum levels of competition.
  - upward and downward rate flexibility.
  - free exit to allow carriers to operate efficiently and shift service to meet changes in demand.
  - substantial reduction in the antitrust immunity presently enjoyed by the industry rate bureaus.
  - preemption of state authority to ensure that deregulation is not hampered by conflicting state policies.
  - a reasonable basis for measuring the effects of regulatory change and determining public interest results.

I. REGULATION AND DEREGULATION IN THE BUS INDUSTRY

The bus industry is regulated by both federal and state agencies. Federal economic regulation rests with the Interstate Commerce Commission, which has authority over interstate bus service. The extent and nature of state regulatory activity varies widely from state to state, but it usually follows the ICC pattern in scope. State regulation is directed at intrastate bus operations.

THE DEVELOPMENT OF BUS REGULATION[1]

Intercity bus transportation in the United States began about 1910, when entrepreneurs using automobiles began to provide transportation services between neighboring communities. By the early 1920s, there were enough bus operators to organize at the state level to promote their growing industry and to discuss common problems.

State governments responded to industry growth by imposing various regulations on operators. Some states wished to ensure passenger safety. Others were more concerned with the effect of large vehicles on highways and therefore restricted the size and weight of vehicles. By 1930, all states except Delaware had introduced regulations directed at the bus industry.

During the mid-1920s, state bus regulation began to change significantly. Pointing to the railroads and capital-intensive public utilities as regulatory precedents, state authorities began to emphasize increasingly the regulation of economic factors such as fare levels and degree of competition. Their goal was to assure the economic welfare and stability of what was then perceived as another "natural monopoly."

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[1] U.S. Senate Committee on Commerce, Science and Transportation, 95th Congress, *Intercity Domestic Transportation System for Passengers and Freight*, pp. 81-84.

State regulatory commissions were also usually amenable to carrier mergers. Given their "public utility" perspective on the industry, size was assumed to be a measure of financial stability, and during the late 1920s and early 1930s, mergers and consolidations occurred frequently.

In 1925, state regulatory control of carriers engaged in interstate transportation collapsed following the Supreme Court's *Buck* decision.[2] State jurisdiction was deemed to be limited to intrastate transportation, except in the establishment of safety standards or regulations intended to protect the condition of highways.

After the *Buck* decision, state regulatory commissions became increasingly concerned with the problem of unregulated interstate carriers and appealed to Congress to enact appropriate federal legislation to control the growing number of interstate operators. Support for the legislation came from other sources as well. Bus operators, both individually and through their trade association, supported federal regulation in the hope that irresponsible operators would be eliminated and the industry's reputation strengthened. Railroads, eager to see their competitors regulated, also favored the legislation. The Interstate Commerce Commission (ICC) recognized a need for federal controls in a study published in 1928. The Commission concluded that "regulation of interstate commerce by motor vehicles operating as common carriers of passengers on the public highways over regular routes and between fixed terminals should be provided by law."[3]

Following years of Congressional debate on a variety of proposals, *The Motor Carrier Act of 1935* gave the Interstate Commerce Commission regulatory jurisdiction over both bus and truck transportation. Since 1935, certain types of regulatory authority over intercity bus carriers have been extended to other federal agencies as well.

FEDERAL REGULATION

The Interstate Commerce Commission

The Interstate Commerce Commission, which is now responsible for most economic regulation of interstate bus carriers, was established under the *Interstate Commerce Act of 1887*.

Specific ICC responsibilities affecting bus carriers include:[4]

- authorizing carrier operations, including the routes and types of services to be offered or abandoned.
- regulating fares and rates.
- investigating ICC rule violations by carriers and enforcing regulations.
- establishing minimum requirements for financial responsibility.
- authorizing carrier mergers, consolidations, and securities issuances.
- authorizing the transfer of operating rights.
- prescribing a uniform system of accounts and reports.
- collecting and analyzing statistical information on the industry.

The primary responsibilities of the Commission — those that have the highest actual or potential impact on the industry — can be summarized as the regulation of entry, exit, fares, service adequacy, and financial fitness of carriers providing interstate service.

Entry

New interstate bus service can be initiated in three ways, all of them subject to Commission approval. Carriers can expand through acquisition or merger, through the purchase of another carrier's operating rights, or through direct application for new operating rights to the ICC. The Commission grants operating approvals separately for each type of interstate service to be offered by carriers (scheduled passenger, charter/tour passenger, or package express)[5] as well as for each route or service area over or within which services are to be offered.[6] In each case, new entrants must demonstrate that proposed new operations "are or will be required by the public convenience and necessity."[7]

In a case before the ICC in 1936 *(Pan-American Bus Lines Operation* I MCC 190), the Commission stated that in evaluating the public convenience and necessity, it was necessary to consider "whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by the applicant . . . without endangering or impairing the operations of existing carriers contrary to the public interest." Table I-1 summarizes the results of contested passenger operating authority cases coming before the Commission in the restrictive *Pan American* context during the 1960s. (Not all cases came before the Commission. Generally, non-contested applications were dispatched with summary grants.)

Table I-1
Number of Commission Approvals and Denials of Operating Authority, 1960-1970

	Regular Route	Charter	Special	Contract
Applications Approved	35	15	20	2
Applications Denied	20	12	13	4
Percent Denied	36%	44%	39%	67%
Reason for Denial "No Need"	12	10	7	3
"No Need" Denials as a Percent of Denials	60%	83%	54%	75%

Source: *Intercity Domestic Transportation System For Passengers and Freight*, Committee on Commerce, Science and Transportation, 95th Congress, p. 97.

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[2] *Buck versus Kuykendall*, 265 U.S. 207.

[3] *Motor Bus and Truck Operations*, 140 ICC 685 (1928), p. 746.

[4] *Federal Regulatory Directory*, 1979-80, Congressional Quarterly, Inc. Washington, D.C., p. 344.

[5] Another type of service, contract carriage, requires a permit rather than the usual ICC operating certificate. Requirements for issuance of a permit are less rigorous than those for a certificate.

[6] *Intercity Domestic Transportation System for Passengers and Freight*, p. 96.

[7] *Motor Carrier Act of 1935*.

The ICC relaxed its protectionist *Pan American* policy in late 1978 with its *Policy Statement on Motor Carrier Entry Regulation* (Ex Parte MC-121), which, in recognition of the overall economic stability of the industry, announced the elimination of the test based on adequacy of service. Specifically, MC-121 stated that a test requiring "an applicant to prove that the service it proposes cannot be performed by existing carriers has outlived its usefulness, and it will no longer be applied."

While a reduction in regulatory barriers to entry has brought some new competition into the industry, historically the ICC has granted few *new* intercity operating authorities because few have been sought. Applicants most frequently have requested minor changes to, or extensions of, operating authorities already held. For example, of the 84 applications filed with the Commission from 1976 to 1978, only five were submitted by new interstate carriers. (All five were approved.)[8] Applications from new or small carriers may have been discouraged by exit barriers and by the length and expense of the regulatory process itself.

Exit

The ICC also has jurisdiction over the abandonment of interstate routes and services. Traditionally, the Commission has unfavorably regarded attempts by carriers to abandon unprofitable operations because of the cross-subsidization commonly expected of regulated common carriers. The Commission tacitly requires that carriers serve some customers and routes at little or no profit in return for regulated protection on more lucrative routes. Consequently, carriers typically attempt to transfer their unwanted operating authority to another carrier or to reduce service frequency rather than to abandon service altogether. In some cases, service has become irregular or dormant. (The ICC has not actively monitored service frequency, although many states do so.)[9]

The existence of exit regulation by the ICC (and by state authorities) may discourage competition to the extent that it makes carriers reluctant to experiment with new, but possibly marginal, service.

Fares

In general, the ICC requires that fares be nondiscriminatory, just and reasonable, and set at the lowest level consistent with providing adequate service. The Commission may investigate the lawfulness of bus fares and may suspend all or part of any proposed change. Carriers must file new tariffs with the Commission 30 to 45 days in advance of the proposed effective date, although changes may actually be granted on shorter notice if, in the Commission's opinion, circumstances warrant.

Requests for industry-wide fare increases are normally handled by the bus industry's rate bureau, the National Bus Traffic Association (NBTA). The NBTA provides a mechanism for tariff negotiation and interline coordination among carriers, activities authorized by the Interstate Commerce Act and exempted from antitrust laws when approved by the ICC. The NBTA also publishes and distributes tariffs.

Before 1973, the ICC conducted only two formal investigations of proposed fare adjustments (in 1951 and 1970) and, in both cases, granted the full increases on the basis that they were just and reasonable.[10] Beginning in 1973, however, Commission investigations became more frequent, and proposed increases were often suspended or granted only in part.[11] These imposed rate ceilings probably contributed to the bus industry's financial decline during this period. The Commission also thwarted certain attempts by the industry to offer special fares in the years following 1973, because they were perceived to be discriminatory.[12]

The ICC has recently demonstrated more leniency in fare regulation. Carriers were allowed to recover rising fuel costs automatically beginning in 1979. In addition, the Commission has rapidly approved fare reductions designed to combat increasing price competition from Amtrak and the airlines.[13]

The Commission has also approved carriers' experiments for dealing with unbalanced demand specific to the industry. The seasonal nature of bus revenues (carriers are most profitable in the summer months) and the decline in long-distance ridership have prompted carriers to implement promotional fares designed to build off-peak and long-distance demand.

The ICC's 1978 proposal entitled "Fare Flexibility for the Bus Industry" (Ex Parte MC-125) indicates the new orientation toward less stringent regulation of fares. This proposal, which is currently "under study," recommends the establishment of a "zone of reasonableness" within which fares could be adjusted without prior approval from the Commission.

Service Levels

The concept of service levels encompasses carrier operating practices as well as scheduling or service frequency.

The ICC has jurisdiction over operating practices, but it does not monitor them closely. While the Commission in 1977 promulgated minimum standards for such services as ticketing, baggage handling, terminal operation, and accommodation of the handicapped, intercity carriers already customarily followed most of the prescribed practices. Such codification of operating practices can be beneficial to passengers to the extent that it assures some minimum level of comfort and safety, but regulation in this area could, as Secretary of Transportation Neil Goldschmidt has noted, also be a constraining influence on innovation.

> "... the adequacy of service regulations adopted in 1977, while not appearing to place an excessive burden on existing carriers, might preclude certain new types of highly flexible, low cost services from being provided with equipment other than full sized intercity coaches. As a rule, it would seem preferable for carriers to be able to make decisions about the types and levels of service to be provided based on their assessment of the markets involved and not based on rigid regulatory service standards or under the threat of the imposition of such standards."[14]

The ICC does not formally regulate schedule changes by carriers on regular routes, although bus operators are potentially constrained by a condition in the certificate of operation that requires the maintenance of reasonably continuous and adequate service.

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[8] *Intercity Bus Service In Small Communities, A Report by Secretary of Transportation Neil Goldschmidt*, U.S. Department of Transportation, January 1980, p. 10.

[9] *Ibid.*, pp. 10-11.

[10] *Intercity Domestic Transportation System for Passengers and Freight*, p. 89.

[11] *Intercity Bus Service In Small Communities*, p. 12.

[12] *Ibid.*, p. 13.

[13] *Ibid.*, p. 12.

[14] *Ibid.*, p. 13.

Other

In addition to the major areas of regulatory oversight discussed above, the ICC exercises authority over several other matters. In the context of deregulation one of the most important is the setting of standards on the financial fitness of carriers by establishing minimum insurance requirements.

Other Federal Regulation

Several other federal agencies exercise varying degrees of regulatory authority over the bus industry. Within the Department of Transportation, for example, the Federal Highway Administration sets safety standards and speed limits, while the National Highway Traffic Safety Administration administers federal programs designed to increase motor vehicle safety and decrease highway and traffic injuries. Other agencies such as the Environmental Protection Agency (emission standards) and the Occupational Safety and Health Administration (safety of the workplace) also regulate limited aspects of carrier operations.

STATE REGULATORY ACTIVITY

State bus regulation touches many of the same aspects of the industry as federal regulation, but applies only to intrastate commerce. This intrastate regulation can significantly affect interstate carriers, as, with rare exceptions, regular route carriers serve both interstate and intrastate passengers on the same schedules. States exert their greatest regulatory influence in the areas of scheduling and passenger fares. Schedule changes, which the federal government does not vigorously scrutinize, often come under intense state scrutiny before approval or rejection. When a motor carrier makes the decision to discontinue or reduce the level of service, states often exercise their power to deny the requested change and thus exert substantial discretionary power over industry operations. Many states closely monitor fares for service between intrastate points, and state authorities have often held intrastate fares below those on equivalent interstate routes.[15]

Two notable turns toward deregulation at the state level have occurred in recent months. Florida deregulated intrastate bus and truck operations in July 1980 (see Sections III and IV), and Arizona voted in November 1980 to deregulate intrastate bus and truck operations.

BUS DEREGULATION

It is important to clarify the definitions of deregulation used in this report.

- *Deregulation* means a substantial reduction in regulation. It refers to reduction in *economic*, as opposed to safety, regulation.
- *Total deregulation* means an elimination of economic regulation.

Thus, deregulation does not mean that all regulatory authority would be eliminated. The purpose of this analysis is to determine what types of deregulation, if any, make sense.

The Debate over Deregulation

The bus industry is almost an afterthought in what has been a widely supported campaign to remove regulatory restrictions on other modes of passenger and freight transportation. Airline deregulation has been in process since 1978; passenger rail service has in the past demonstrated a high degree of (subsidized) fare flexibility; and many economic restrictions have been removed from the trucking industry. Many observers see the bus industry as the next logical candidate for regulatory reform. For example, an ICC staff study concluded in 1979 that "greater reliance on market forces would result in an intercity bus system responsive to evolving market conditions. Relaxed entry and exit coupled with pricing flexibility should achieve a greater variety in quality and level of service offered and in prices for those services."[16] Both the ICC and the bus industry's trade association have submitted reform proposals to Congress.

Despite predictions by proponents of deregulation of lower fares, service innovations, and better overall service, considerable controversy remains over the possible ramifications of regulatory change. For example, it has been suggested that smaller carriers within the industry might be subject to predatory or unfair behavior by larger carriers if entry and fare restrictions were lifted. Critics of reform predict that needless service duplication and disruptive competition would be inevitable following deregulation, and some states and localities fear a loss of service to small communities if bus companies were allowed to give up unprofitable routes. Concerns such as these are reflected in the wide variety of policy proposals that have been proposed recently.

Options[17]

Industry representatives, regulators, legislators, and others have proposed reforming federal economic restrictions on the bus industry. Some call for full economic deregulation, essentially the removal of all barriers to entry, exit, and fare determination, while others have espoused altering only some of the restrictions. It is helpful to review the major policy options that have surfaced in various published discussions and proposals. While these options have been classified below into four categories of present economic regulation — entry, exit, fares, and financial fitness — it is important to recognize that each factor influences the others. For example, it would make little sense to allow free entry without free exit. Otherwise, firms that might be subsidizing marginal routes with more profitable ones (at the behest of the regulatory authorities) would be required to continue their marginal service while facing "cream-skimming" competition on their more profitable routes. Furthermore, a no-exit policy would discourage development of competition that a free-entry framework would normally yield. It could place carriers, especially new or small ones, in the position of being unable to afford the risk of being locked in on a new venture which might generate large operating losses with no hope of escape.

Entry

Options concerning entry differ with respect to ease of entry, qualifications for financial fitness, and treatment of particular competitors. Options include:

- The removal of all entry restraints to promote maximum levels of competition in the bus industry.

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[15] Remarks of Arthur D. Lewis, President, American Bus Association, before the Conference on Intercity Bus Transportation, Washington, D.C., September 22, 1980.

[16] Interstate Commerce Commission, *Report of the Bus Industry Study Group*, October 1979, p. 64.

[17] Options listed below were mentioned in National Research Council, *Proceedings: Conference on Intercity Bus Transportation*, December 1980, Washington, D.C.

- **Easier entry standards for selected services, routes, and geographic areas.** This approach purports to provide an answer to perceived problems of inadequate competition in scattered areas.
- Free entry or reduced entry standards coupled with specific exceptions designed to protect particular groups of carriers. One such approach prohibits carriers exceeding a certain revenue ceiling from gaining new authority. Other proposals add route protection for "bridge" carriers that currently serve routes linking "through" service provided by other carriers.
- Restricted entry based on strict standards of public convenience and necessity. This would require that grants of operating authority be based upon substantial evidence of need and the ability to recover costs. This approach essentially maintains the present regulatory approach, as it places responsibility on the government for ensuring that routes do not become crowded and that destructive competition does not occur.

Exit

Although policies concerning exit are closely intertwined with those regarding fares and entry, state regulation emerges as a major issue with regard to exit. Absent federal remedies, states might continue to be pressured to tightly control exit, and continuing state control over route abandonment would essentially nullify any extensive reform initiatives at the federal level. Options include:

- Free exit from all routes without mandatory advance notice or application, along with preemption of state regulations on schedules and routes. A free-exit policy would allow carriers to price their services fairly, efficiently utilize vehicles, and avoid cross-subsidization between interstate and intrastate passengers.
- Free exit from routes and services with adequate notice, plus preemption of state regulation. This approach would allow adjustments in service and encourage competition, but it would also allow communities the time to review the alternatives to service discontinuance, such as paying increased fares, or seeking replacement carriers or subsidies, if needed.
- Free exit on interstate routes but no preemption of state regulation, resulting in a potential for continued restrictions against free exit. This option purports to protect small communities from loss of service but a potential cost to "profitable passengers" who may be forced to subsidize unprofitable routes.

Fares

Fare policies generally refer to fare flexibility and the existence of "rate bureaus."

- Proposals for fare flexibility differ on the degree of upward and downward flexibility, or "zones of reasonableness," allowed. Relatively free adjustment in both directions would encourage maximum competition and responsiveness to demand and resource costs. Free downward flexibility coupled with restrictions on upward adjustment would also encourage price competition, but might cause cost recovery problems for the industry. New route or service experiments might also be discouraged as a result of constraints on profitability, depending on the degree of restriction retained.
- Rate bureau issues concern collective fare-making among carriers. Carriers currently negotiate two types of fares through the industry's rate bureau; single-line and joint-line fares. Options include:
  - Elimination of discussion among carriers concerning single-line fares. This would make collective action subject to antitrust laws, which would probably contribute to price competition.
  - Elimination of discussion among carriers concerning joint-line fares. The Interstate Commerce Act currently requires that joint fares be established between and among companies for inter-line trips. The elimination of inter-carrier negotiation on joint fares might make service coordination more difficult, although this problem appears to have been solved in the airline industry. (Airlines coordinate operational procedures, such as ticketing and baggage transfer, but do not normally set fares jointly.)

Financial Fitness

Debate in the area of financial fitness concerns the level of insurance coverage necessary for motor carriers of passengers. Because of the cost of insurance, standards for financial fitness have the potential of becoming barriers to entry. Higher levels would better protect the public, while lower levels would make it easier for small firms to enter and compete. The current minimum coverage for bodily injury or death (single occurrence) is $500,000.

National Proposals for Deregulation

Although several proposals currently exist for the deregulation of the bus industry, only two have been submitted to Congress as of December 1980.

H.R.7677/S. 2895 BUS REGULATORY MODERNIZATION AND IMPROVEMENT ACT (American Bus Association, introduced in the 96th Congress on June 12, 1980)

- Entry: This proposal liberalizes existing controls. Proposed service must be shown to be consistent with, rather than required by, public convenience and necessity.
- Exit: This proposal preempts state authority and provides for public notice of proposed discontinuance of service.
- Fares: Upward fare flexibility would be determined by a standard industry fare level, adjusted for inflation. The proposal allows downward fare flexibility of 20% below standard industry fares. (These levels are similar to those established in the *Airline Deregulation Act.*) Increases or decreases outside of the zone are subject to regulatory review and suspension. Joint consideration of single-line and joint-line bus fares is allowed.
- Finances: Minimum insurance coverage is raised to $2,000,000.

THE MOTOR BUS ACT OF 1981 (Interstate Commerce Commission: Proposed Legislative Reform of Intercity Bus Regulation, transmitted to 96th Congress on December 15, 1980)

- Entry: Allows entry if the applicant can show a public demand for the proposed service (a substantially reduced requirement compared to the existing "public convenience and necessity" test), and entry upon proof of fitness only for charter and tour service.
- Exit: Preempts all state authority regarding discontinuance of service and scheduling. It also provides for public notice of proposed discontinuance of service.
- Fares: Regarding upward flexibility, the aggregate of yearly

increases and decreases is not to exceed 10% above the rate in effect during the previous year. Downward flexibility must not exceed 20% below the lesser of (a) the rate in effect on the date of the enactment of the bill or (b) the rate in effect one year prior to the downward adjustment. Joint consideration of single-line fares is prohibited; joint consideration of joint-line fares is allowed under certain circumstances.

- Finances: Provides for minimum insurance coverage of $1,500,000, but the Secretary of Transportation could reduce the amount to $750,000.

Evaluating Proposals for Deregulation

The issues of public policy and bus industry economics are closely related in the consideration of whether deregulation should be partial or total. By changing the rules of competition in the industry, regulatory reform will undoubtedly lead to changes in the industry. Service adjustments would be beneficial for many users, but some observers perceive threats of cutbacks in service, reduced competition, or a general decline in the quality of service. These concerns add to the current debate.

For purposes of evaluation, it is helpful to measure proposals for regulatory change against some yardstick or set of goals for bus transportation. From a standpoint of transportation policy, the following goals are suggested, although they may not be exhaustive.

1. *A financially healthy industry.* While this consideration is important in any industry, it is especially so in an industry providing essential public services. Without adequate financial returns, it becomes impossible to generate adequate capital, either internally or externally, to finance buses, retain skilled personnel, or make other investments. The quality of service would gradually deteriorate.
2. *A balance of competition.* Users would be best served in an environment where carriers are always subject to existing or potential new competition. This environment would encourage maximum efficiency, innovation, and fair pricing.
3. *Intermodal balance.* Bus service must be viewed as part of a larger network of options for passenger and freight transportation. Other modes of transportation are already in the process of regulatory reform or have relatively few economic restrictions. If bus service is to compete, carriers should have equal freedom to develop opportunities and respond to customers' needs.
4. *The availability of bus service to meet demand.* Bus service is a desirable social commodity. Most communities generate sufficient ongoing demand to support adequate and competitive bus service. Some smaller communities, however, may now receive bus service only through cross-subsidization by other passengers and services. In order that other suggested transportation goals (e.g., a financially healthy industry, energy efficiency) be achieved, alternate options for meeting low or irregular demand in small areas should be encouraged.
5. *Energy efficiency.* Fuel conservation is a critical social responsibility. An industry environment should be encouraged that avoids consistently under-utilized capacity or the use of unsuitable capacity on low-demand routes.

The following sections examine these issues in detail.

II. THE PASSENGER TRANSPORTATION INDUSTRY

This section examines passenger transportation. Demand for passenger transportation can be met by a number of transportation modes — automobile, rail, bus, air, trolley, and even ferry. The bus industry competes for passengers with all of these modes, and any analysis of the impact of deregulation must consider the position of the intercity bus industry within the passenger transportation industry.

DEFINITION

For the purposes of this analysis, the passenger transportation industry is defined as comprising air, rail, bus, and auto transportation. These four transportation modes are further limited to passenger carrying vehicles. To portray this industry as completely as possible, data from several sources have been used. These statistics provide a good overview of the industry as well as a good basis for comparison; nevertheless, they are limited by the availability of data and thus tend to understate the diversity and extent of competition in the passenger transportation industry. For example, data are not available on bus carriers other than those recognized by the ABA, on general aviation, and on other segments of the passenger transportation business. Air transportation statistics comprise domestic operations and include scheduled and supplemental aircraft. Rail transportation statistics are limited to Class I carriers,[1] which reflect total passenger traffic.[2] Bus statistics include only ABA recognized carriers; they reflect intercity regular-route, local regular-route, and charter and special services. Since January 1977, Class I bus statistics include only carriers with operating revenues of $3,000,000. From 1969 through 1976, the criterion for inclusion was $1,000,000, before 1969, $200,000.[3]

Local transit figures are included where data are available. Local transit is comprised of heavy and light rail, trolley coach, and buses used specifically for local transit. When available, statistics for each of these segments are included. The statistics used in this report reflect those most closely approximating the passenger transportation industry as defined above, but definitions will vary according to the availability of information. Definitions and supporting tables for the statistics in this section are included in the appendix. The modal structure of the passenger transportation industry covered in this report is shown in Chart II-1.[4]

SIZE AND GROWTH

The domestic public passenger transportation industry has grown from $9.1 billion in passenger operating revenues in 1970 to $27.3 billion in 1979. The bus industry represents a relatively small and declining share of passenger transportation. Including all local transit carriage (roughly 30% of which is

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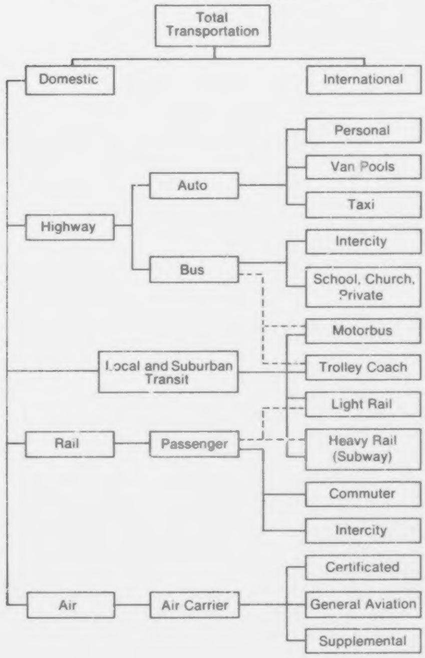
[1] Class I railroads consist of those with operating revenues of $5,000,000 effective January 1, 1965, $10,000,000 effective January 1, 1976, and $50,000,000 effective January 1, 1978. The most significant effect of the changed status occurred in 1978, when 14 railroads were eliminated from the Class I category and placed in the Class II category. In 1977, these 14 companies represented 1.3% of traffic, 1.4% of rail employees, and 8.6% of net income of all Class I railroads. *Yearbook of Railroad Facts 1980*, Association of American Railroads, Washington, D.C., p. 2.

[2] According to the Statistics Division of The Association of American Railroads, Washington, D.C.

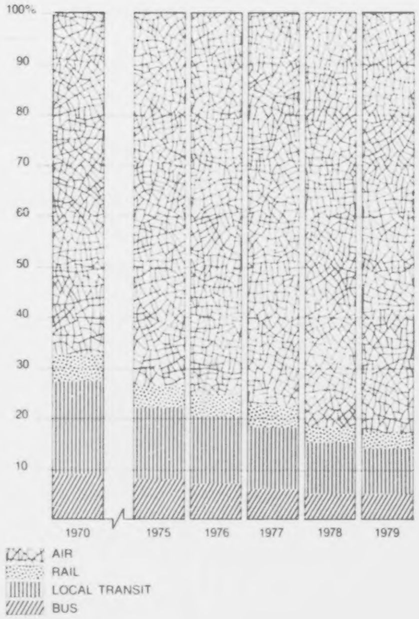
[3] *1980 Report of the American Bus Association*, Washington, D.C., p. 25.

Chart II-1
Modal Structure of Passenger Transportation Industry



nonbus transportation), overall bus passenger revenues have declined from 9% of total passenger revenues in 1970 to 5% in 1979 (see Chart II-2).[5]

Chart II-2
Percent Total Passenger Operating Revenues By Mode
1970-1979



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*TERMS *Motorbus* — Rubber-tired, self-propelled transit vehicle with fuel supply carried on board the vehicle

Trolley Coach — A vehicle with the steering capability of a motorbus running on rubber tires but drawing power from electric overhead wires

Light Rail — Streetcar, trolley car, or light surface rail operations including private right-of-way operations, typified by low platform stations, one-man operation at all times, capability for on-board fare collection, and actual on-board fare collection most of the time

Heavy Rail — Rail rapid-transit services

Certificated Air Carrier — One of a class of air carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board (CAB). It includes all-purpose carriers. Often the term "certificated" is used interchangeably with "scheduled airlines," although they also perform nonscheduled services

Supplemental Air Carrier — One of a class of carriers now holding certificates issued by the CAB, authorizing them to perform passenger and cargo charter services supplementing the scheduled service of the certificated route air carriers. Sometimes referred to as "nonscheduled."

Scheduled — Transport service operated over an air carrier's certificated routes, based on published flight schedules including extra sections and related nonrevenue flights

General Aviation — Refers to the operation of U.S. civil aircraft owned and operated by persons, corporations, etc., other than those engaged in U.S. air carrier operations

[5] Based on Table A-1 in the appendix. Data are from the following sources

AIR 1970-1977, *U.S. Statistical Abstract, 1979*, p. 664. 1978-1979, *Air Transport 1980*, p. 21. (Air is defined as domestic certificated carriers.)

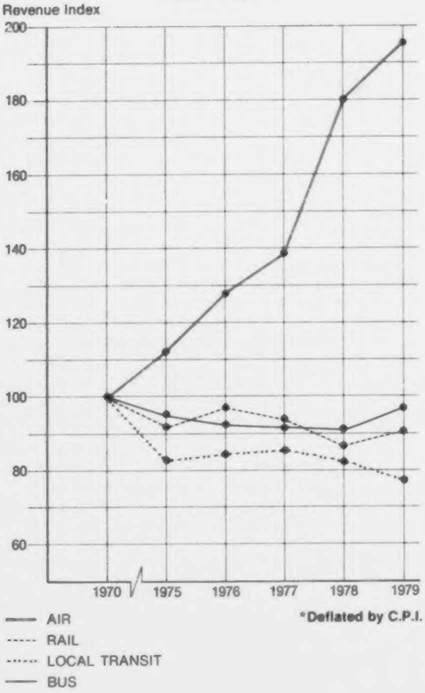
RAIL 1970-1979, *1980 Yearbook of Railroad Facts*, p. 14. (Rail is defined as Class I, Amtrak beginning in 1971, and Auto-Train for the years 1972 to 1977.)

BUS *1980 ABA Report*, pp. 28, 29. (Includes intercity regular route, local regular route, and charter and special services.) Class I statistics are taken directly from p. 29. Total passenger revenues are calculated as the total operating revenues for all classes minus package express for Class I carriers. Classes II and III are calculated as the total minus Class I.

LOCAL TRANSIT *Transit Fact Book 1978-1979*, p. 23. Light rail is defined as a street car-type transit vehicle operated on rails on city streets, heavy rail is defined as a subway-type transit vehicle railway with high-level platform stations, trolley coach is defined as a manually steered rubber-tired transit vehicle propelled by electric motors drawing current, normally through overhead wires, motorbus is defined as a rubber-tired, self-propelled, manually steered transit vehicle with fuel supplied on board the vehicle

While operating revenues for the passenger transportation industry as a whole have grown at an annual compound growth rate of 13% between 1970 and 1979, growth has varied considerably among modes (see Chart II-3).[5] Intercity bus revenues grew at only 6.7% annually. In contrast, airline passenger revenues grew at 15.4% annually. When inflation is taken into account, air passenger revenues are the only transportation revenues to have shown real growth during the 1970s.

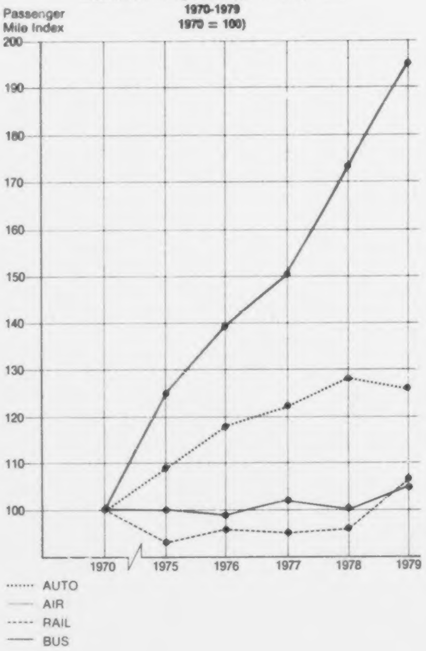
Chart II-3
Growth in Revenues
By Mode*
1970-1979
(1970 = 100)



***Deflated by C.P.I.**

During the same period, total intercity passenger-miles increased at an annual rate of 3.1%. Intercity bus passenger-miles increased at a rate of only 0.6% annually, less than all other modes of transportation (see Chart II-4).[6] Bus passenger-miles in 1978 were the same as those in 1975.

Chart II-4
Growth in Intercity Passenger-Miles by Mode
1970-1979
1970 = 100)



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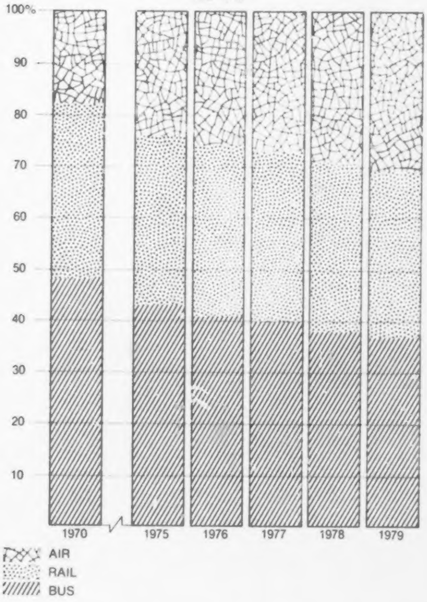
[6] Based on Table A-2 in the appendix. Data are from *Transportation Facts and Trends*, Transportation Association of America, July 1980, pp. 18, A-10. Air is defined as all domestic certificated carriers. Bus is defined as Class I, II, and III carriers. Rail is defined as railroads of all classes, including Amtrak and Auto-Train. Rail figures also include commutation, which represents 44% of the total.

The number of intercity passengers carried has grown from 839.9 million in 1970 to 946.4 million in 1979, an annual growth rate of 1.3%. However, the intercity bus share of passengers has declined (see Chart II-5).[7]

Chart II-5
Percent of For Hire Intercity Passengers Carried
By Mode
1970-1979



The intercity bus industry has many more participants than competing transportation modes. While the rail and, to a lesser extent, air industries consist of a small number of carriers, the bus industry continues to consist of a large number of independent carriers.

Table II-6
Number of Transportation Companies
1970-1979

	1970	1975	1976	1977	1978	1979
AIR (Domestic Certificated)	35	30	30	30	32	50
RAIL (Class I, Intercity Passenger)	29	21	17	17	17	15
LOCAL TRANSIT SYSTEMS	1,060	951	962	1,011	1,003	N/A
BUS (Class I, II, III)	1,000	950	1,000	1,050	1,100	1,150

Source: See Footnote 8.
N/A Statistics are not available.

INTERMODAL PERFORMANCE CHARACTERISTICS

Relative Intermodal Transportation Costs

Transportation expenditures (primarily for automobiles) comprised approximately 14% of expenditures for personal consumption in 1979 (see Table A-4 in the appendix).[9]

Personal expenditures for automobiles accounted for almost 95% of total personal expenditures for transportation in 1979. Those for bus were less than 0.4% (see Table A-5 in the appendix). Expenditures for intercity bus transportation represented only 10.7% of expenditures for intercity transportation and 6.7% of total purchased transportation expenditures in 1979. In contrast, expenditures on air transportation represented 84.7% of intercity passenger expenditures and 52.8% of total purchased transportation expenditures.

Bus and rail continue to be the lowest priced transportation modes on a basis of fare box revenue obtained from passengers per passenger-mile, although the percentage differential between these modes and air transportation has been reduced substantially over the last decade.

Table II-7
Passenger Revenue Per Passenger-Mile
1970-1979
(cents)

Mode	1970	1975	1976	1977	1978	1979
AIR (Domestic Certificated)	6.00	7.69	8.16	8.61	8.29	8.70
RAIL (Class I)	3.91	5.40	5.74	5.92	5.95	6.26
BUS (Class I)	3.37	4.40	4.66	4.75	5.15	5.71

Source: See Footnote 10.

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[7] *Transportation Facts and Trends*, pp. 19, A-11. Passengers carried are based on the count of each person boarding a public carrier; one person making a round trip is counted as at least two passengers. Air is defined as all domestic certificated carriers. Passengers are equal to the number of enplanements. Bus statistics reflect Class I, II, and III carriers. Rail statistics reflect Class I intercity and commuter passengers. Commutation reflects 72% of total rail passengers.

[8] AIR: 1970-1978, *1979 U.S. Statistical Abstract*, p. 664. 1979 data quoted from Paul Gavel, Financial Section, Civil Aeronautics Board.
BUS: *1980 ABA Report*, p. 28. Includes Class I, II, and III carriers.
RAIL: *The Official Railway Guide*, North American Passenger Travel Edition, April 1970, 1975-1979.
LOCAL TRANSIT: *Transit Fact Book 1978-1979*, p. 38. Figures for 1970-1977 are adapted from figures that list public transit systems as a percent of total transit systems. Figures for 1978 are taken directly from p. 14. Transit systems are defined as organizations providing intraurban common-carrier passenger service over at least one regular fixed route with a published time schedule, not including variable-route service, unscheduled service, or interurban service.
Buses comprised approximately 98% of total local single transit systems in 1978, according to American Public Transit Association statistics. They represented 69% of local transit revenues, however.

[9] *National Transportation Statistics*, U.S. Department of Transportation, 1979, p. 64.

[10] AIR: *National Transportation Statistics*, for years 1970-1977, p. 44. *Air Transport 1980*, pp. 18 and 21 for 1978, 1979. For years 1978 and 1979, total passenger revenue is divided by total revenue passenger-miles. Statistics reflect scheduled operations only.
RAIL: *1980 Yearbook of Railroad Facts*, p. 34. Class I trains.
BUS: *1980 ABA Report*, pp. 28, 29. Figures are calculated as total passenger operating revenues over the total intercity revenue passenger-miles for Class I carriers. 1976 figures adjusted to reflect change in Class I classification from 1977.

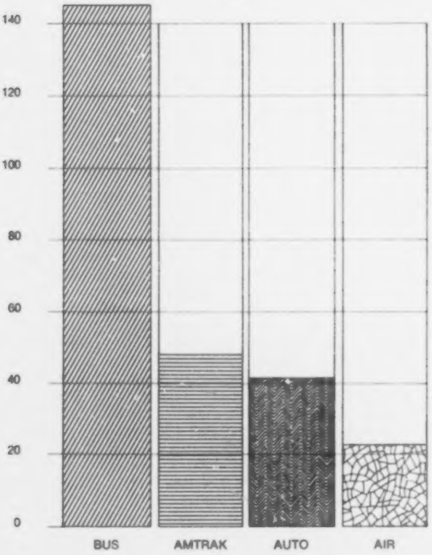
Relative Intermodal Operating Characteristics

Average trip lengths have increased slightly during the past five years for all transportation modes. Air is clearly the preferred mode for long trips, having an average trip length of 723 miles compared to 76 miles for bus (123 miles for Class I intercity carriers), and 38 miles for rail in 1979.[11] Table A-6 in the appendix presents historical data on average trip length.

The bus industry has been adversely affected by the introduction of the 55 mph speed limit, which increased running time and labor costs per trip. Consequently, while technological innovation has increased the average speed of air carriers,[12] thereby reducing trip times, the bus industry is offering slower service today than it was in 1970. Rail speed is expected to increase in the next few years as public funds are provided to accelerate track maintenance and development of the Northeast Corridor.[13]

The intercity bus is the most fuel efficient form of intercity mass transportation. In scheduled service, operating at less than 50% capacity, buses averaged 116 passenger-miles per gallon of diesel fuel in 1979.[14] In tour and charter service (which have higher load factors), buses averaged 208 passenger-miles per gallon. Overall, during 1979, buses averaged 144 passenger-miles per gallon. The comparable figure for Amtrak was 47 passenger-miles per gallon.[15]

Chart II-6
Passenger Miles Per Gallon of Fuel
1979



TRANSPORTATION CORRIDORS

Public transportation is particularly concentrated in the Northeast. The New England, Middle Atlantic, and lower Middle Atlantic regions accounted for 22% of all trips over 100 miles in length but comprised 31% of all bus trips, 29% of all air trips, and 57% of all rail trips in 1977.[16] If regional data were available on shorter trip lengths, it is believed that these percentages for rail and bus would be much higher. Table A-7 in the appendix depicts the distribution of person-trips by mode for all regions.

No region depends on the bus for more than 5% of its person-trips, and in the West and the South the bus share of person-trips does not exceed 3%. By contrast, buses account for 5% of total person-trips in the Middle Atlantic region (see Table A-8 in the appendix).[17]

Within the regions, the principal bus corridors are between major cities. Over 70% of all person-trips are made by people residing in metropolitan areas — a figure that does not vary significantly among regions, with the exception of the Mountain West and, to a lesser extent, the South (see Table A-7). As with other transportation modes, the bus depends on an increasingly urban passenger population.

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[11] Based on Table A-6 in the appendix. All figures except Intercity Class I bus miles reflect the ratio of Table A-2 (Intercity Travel by Mode) to Table A-3 (Intercity Passengers Carried). Class I bus miles were generated from Exhibit I in *Intercity Bus Service in Small Communities*, Committee on Commerce, Science, and Transportation, 1978, p. 3.

[12] *1979 Statistical Abstract*, p. 667.

[13] Amtrak's five-year *Corporate Plan*, FY 1978-1982, published in 1977, p. 57.

[14] *1980 ABA Report*, p. 2.

[15] *Ibid.*

[16] *1977 Census of Transportation*, U.S. Bureau of Census, pp. 67-109.

[17] *Ibid.*

III. THE ECONOMICS OF THE INTERCITY BUS INDUSTRY

INDUSTRY CHARACTERISTICS[1]

The intercity bus industry in 1979 included 1,150 companies recognized by the American Bus Association (ABA), operating 20,500 buses. These carriers offered some or all of three basic types of service: regularly scheduled ("regular-route") intercity and local service, charter and tour service, and the transportation of small packages or "package express" service. Statistical data on these carriers are collected by the ABA and the Interstate Commerce Commission. There are also a number of "gypsy" carriers operating intermittent charter-type service without any federal or state authority that are not represented in industry statistics.[2] While these carriers may represent a significant portion of the total bus industry, they are not included in this analysis because of the lack of data on their operations or size.

All but 60 of the ABA-recognized carriers in 1979 had revenues under $3 million per year and were, therefore, classified by the ICC as Class II or Class III carriers. In general, these carriers derived the largest portion of their revenues from charter-type and commuter operations. In contrast, each of the 60 Class I carriers had revenues over $3 million, and 46 of these firms obtained the largest share of their revenues from scheduled intercity passenger service. In 1979, these 46 intercity carriers obtained an average of 67% of revenues from scheduled regular-route service, 15% from charter service, and 16% from package express.[3] (For the balance of this paper the term Class I *intercity* carriers will be used to distinguish these 46 carriers from the total of 60 Class I carriers.)

While the Class I intercity carriers provided the bulk of scheduled bus passenger service and collected 70% of total bus passenger revenues in 1979, they carried only 37% of the 360 million bus passengers, an indication of the significance of smaller companies in the industry. It is apparent from Table III-1 that, in the operation of charter and tour services, the Class II and Class III carriers operated more bus miles, carried more passengers, and collected more revenues than the larger Class I carriers. Thus, charter and tour services are an important part of the industry service mix. The smaller carriers were also a factor in the carriage of regular-route passengers, albeit over generally shorter, more localized routes.

TABLE III-1
Comparison of Regular-Route and Charter Service
Class I vs. Class II/III Intercity Carriers
(Percent of Industry Total)
1979

	Passenger Revenues	Passenger Miles	Bus Miles	Passengers
PERCENT OF INDUSTRY TOTAL				
Regular-Route				
Class I	92%	89%	85%	77%
Classes II/III	8%	11%	15%	23%
Industry Total	100%	100%	100%	100%
Charter/Tour				
Class I	39%	36%	36%	35%
Classes II/III	61%	64%	64%	65%
Industry Total	100%	100%	100%	100%
Combined Passenger Services				
Class I	70%	64%	68%	37%
Classes II/III	30%	36%	32%	63%
Industry Total	100%	100%	100%	100%
INDUSTRY TOTALS (Millions)	$1,409	27,200	1,132	360

Note: Percentage breakdowns on package express service not available. The Class I carriers are known to provide the largest portion of package express service because of their large regular-route systems. Industry passenger revenue is estimated from 1979 A.B.A. data.

Source: *America's Most Fuel Efficient Transportation System, The 1980 Report From the American Bus Association*, pp. 4, 24, 25, 28.

FINANCIAL AND OPERATING TRENDS

The past decade was a period of financial deterioration for companies in the bus industry. Carriers experienced diminishing profits through most of the 1970s, a result of declining ridership, competition from other modes of transportation, and fare adjustments insufficient to offset rapidly rising costs.

Industry statistics show that 1974, when gasoline was temporarily in short supply, was the only point between 1970 and 1977 that ridership did not decline. By 1977, ridership had dropped 17% below the 1970 level and remained at 10% under that peak in 1979, despite passenger gains in 1978 and 1979. (The Class I intercity carriers, as a group, suffered losses on the same scale as the industry as a whole.)

While buses still carry more intercity passengers than either the airlines or the railroads, the bus carriers' share of total intercity public transportation traffic dropped from 48% in 1970 to 37% in 1979 (see Chart II-5 in Section II).[4]

Industry operating revenues grew 80% during the 1970-1979 period, but most of these increases were attributable to passenger fare adjustments and to growth in charter and package express services. An 89% increase in expenses exceeded the overall growth in revenues. Consequently, operating margins (operating profits expressed as a percent of revenues) generally declined over the period, reaching a nadir of 3.9% in 1978.

Table III-2 summarizes some key operating and financial trends for the industry.

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[1] All industry data in the text, unless otherwise specified, from *America's Most Fuel Efficient Passenger Transportation Service, The 1980 Report From the American Bus Association*, Washington, D.C., pp. 4, 24, 26, 28-32.

[2] *The Intercity Bus Industry, A Preliminary Study*, Interstate Commerce Commission, May 1978, p. 11.

[3] Total number of Class I carriers for 1979 from the American Bus Association, based on ICC data.

[4] *Transportation Facts and Trends*, Transportation Association of America, p. 19.

Table III-2
Bus Industry Statistics 1970-1979
(Including Class I, II, and III Carriers)

	1970	1973	1976	1979	% Change 1970-79
Number of Companies	1,000	1,000	1,000	1,150	+15%
Number of Buses	22,000	20,800	20,000	20,500	− 7%
Total Bus-Miles (Millions)	1,209	1,178	1,118	1,132	− 6%
Operating Revenues ($ Millions)	$901.4	$1,022.7	$1,231.9	$1,627.0	+80%
Operating Expenses ($ Millions)	$812.2	$ 937.9	$1,247.6	$1,539.1	+89%
Operating Margin	9.9%	8.3%	4.2%	5.4%	−45%
Passengers (Millions)	401	381	340	360	−10%
Passenger-Miles (Millions)	25,300	26,400	25,100	27,200	+ 8%
Revenue Per Passenger-Mile	3.6¢	3.9¢	4.9¢	6.0¢	+67%
Consumer Price Index (Services)	100.0	114.16	151.0	198.0	+98%

Source: *America's Most Fuel Efficient Transportation System, The 1980 Report From the American Bus Association*, pp. 28, 29. *Survey of Current Business*, U.S. Department of Commerce, Bureau of Economic Analysis.

The Class I carriers suffered a steeper decline in financial performance than the industry as a whole. An increase in revenue of 79% from 1970 to 1979 was accompanied by a 92% climb in expenses. As shown in Table III-3, return on investment and return on equity for Class I carriers also fell during the 1970s. These two profitability measures are more meaningful than the simple operating margins, as they measure profitability relative to the amount of ongoing resources needed to conduct the business.

Table III-3
Financial Summary — Class I Intercity Carriers

Year	Operating Margin[a]	Return on Equity[b]	Return on Investment[c]
1971	12.4%	16.1%	20.7%
1972	11.1%	14.7%	19.7%
1973	9.4%	13.7%	17.9%
1974	7.9%	13.3%	17.1%
1975	6.4%	12.5%	13.9%
1976	4.5%	8.3%	10.2%
1977	4.6%	8.4%	11.0%
1978	3.7%	N/A	9.5%
1979	4.8%	N/A	12.4%

N/A = Not Available

[a] Operating Margin = Operating revenues less operating expenses, expressed as a percent of revenues.

[b] ROE = Net income (after taxes) divided by total average stockholder's equity.

[c] ROI = Operating earnings (before taxes and interest) divided by average investment in operating property and working capital.

Source: See Footnote 5.

The business mix of the Class I carriers has changed since 1965. Table III-4 demonstrates the increasing importance of charter and package express revenues as a portion of all revenues. Between 1970 and 1979, regular route and other revenues grew 63% and 99%, respectively, while package express receipts increased 95% and charter revenues expanded a full 177%.[6]

Table III-4
Percentage Distribution of Class I Intercity Carriers
Operating Revenues

	1965	1970	1975	1979
Regular Route	76.9%	72.6%	68.5%	66.7%
Charter	10.6%	11.1%	15.4%	15.2%
Package Express	10.0%	14.2%	13.7%	15.9%
Other Revenues	2.5%	2.1%	2.4%	2.2%
Total	100.0%	100.0%	100.0%	100.0%
Total Revenues (Millions)	$607.3	$721.7	$954.7	$1,205.9
Companies Represented (Class I)	156	71	85	46
Percent of Industry Revenues	86.7%	80.0%	81.5%	74.1%

Note: The minimum revenue level necessary for a carrier to be categorized as "Class I" was changed by the ICC in 1969 to $1,000,000 from $200,000 and again in 1977 to $3,000,000. The number of companies so classified dropped in each of those years, although the companies remaining in each case continued to account for at least 74% of total industry revenues. Charter and package express services would have probably been even more important by 1979 if the number of Class I companies had remained constant.

Source: *America's Most Fuel Efficient Transportation Service, The 1980 Report From the American Bus Association*, p. 29.

Charter and package express services are often considered to be more lucrative than scheduled passenger service.[7] Charter service, for example, probably has a higher profit potential than regular-route service because of its higher average load factors and longer average trip lengths, and because carriers are free to tailor service levels and options to the specific needs of particular groups or destinations. Both charter and package express services provide incremental revenue from existing equipment capacity, although some additional capacity may be dedicated specifically to charters and a small amount to package transportation.

Accurately assessing the profitability of different services is difficult because most carriers do not segregate and report operating costs by service. The ICC, in its *Preliminary Study*,[8] used three different methods to estimate industry operating costs and concluded that intercity regular-route service appears to be profitable only when revenues from package express, mail, and other "incidental" services are added. The ICC estimated charter service to be generally profitable by itself, with these profits also supporting service on regular routes. E.R. Pinkston,[9] working with 1971 and 1972 data, reached essentially the same conclusions. The result is that the industry appears more profitable than it would be if it were comprised only of regular-route intercity passenger business.

DIVERSITY OF FINANCIAL PERFORMANCE

While the average operating margins in the bus industry in recent years have been low, Class I carriers exhibit substantial diversity in financial performance. For example, the selected

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[5] Financial returns from *The Intercity Bus Industry, A Preliminary Study*, Interstate Commerce Commission, Washington, D.C., May 1978, pp. 61, 88. Also, return on investment for 1977-1979 from *Statement In Support of Proposed Increase of 9% in Passenger Fares and Express Rates*, John A. Grody, President, National Bus Traffic Association, filed with the ICC on June 30, 1980. Operating margins from *America's Most Fuel Efficient Transportation Service, The 1980 Report from the American Bus Association*, p. 28.

[6] Growth figures corrected for the 1977 change in the number of companies categorized as Class I intercity carriers. The number dropped from 81 to 46 when the revenue criterion was raised from $1 million to $3 million on January 1, 1977.

[7] Elizabeth A. Pinkston, *The Intercity Bus Transportation Industry: An Industrial Organization Study*, Yale University, New Haven, Connecticut, 1975, pp. 29, 31, 54, 144.

[8] *The Intercity Bus Industry, A Preliminary Study*, pp. 93-97.

[9] *The Intercity Bus Transportation Industry: An Industrial Organization Study*, Chapter 2.

operating results shown in Table III-5 ranged from a loss of 4.5% to an operating profit of 25.8% in 1979 and varied significantly in prior years as well.

Table III-5
Operating Performance of Selected Class I Carriers
1977-1979

	Operating Margins 1977	 1978	 1979
Revenues over $6 Million in 1979			
Kerrville Bus[a]	19.6%	21.8%	22.8%
Carolina Coach[b]	13.1%	15.0%	17.9%
Oklahoma Transportation	3.0%	6.4%	14.2%
Bonanza Bus Lines	9.4%	9.2%	13.8%
Las Vegas-Tonopah-Reno	−10.6%	7.5%	12.0%
Pacific Trailways[b]	7.1%	2.2%	8.2%
Adirondack Transit[b]	6.1%	3.4%	8.1%
Greyhound Lines	4.6%	2.6%	5.7%
Suburban Transit	0.7%	0.4%	1.9%
Trailways[c]	3.8%	4.0%	0.9%
Hudson Transit	−0.6%	−3.0%	−2.5%
Lincoln Transit	−3.6%	−6.7%	−4.5%
Revenues under $6 Million in 1979			
Southeastern Stages[a]	8.0%	24.5%	25.8%
Martz Coach[b]	2.7%	7.0%	11.4%
Indian Trails	3.6%	2.8%	10.9%
Peter Pan Bus	7.7%	4.7%	7.7%
MK&O Coach Lines	1.3%	1.5%	7.4%
Bluebird Coach Lines	6.2%	11.3%	6.1%
Gulf Transport	7.1%	5.0%	5.8%
Capital Bus Company[b]	9.2%	7.7%	5.6%
Decamp Bus Lines	−2.2%	2.7%	0.1%

[a] Partially owned by Greyhound Lines.
[b] Independent member of the National Trailways Bus System.
[c] Consolidated results for Trailways, Inc. and wholly owned subsidiaries.

Sources: Interstate Commerce Commission, *Financial and Operating Statistics: Class I Motor Carriers of Passengers Statement No. 750* (1978), Washington, D.C., 1978. Margins for 1979 from the American Bus Association, based on ICC data.

The ICC, in its May 1978 *Preliminary Study* of the bus industry,[10] suggested a variety of possible explanations for the differences in profitability among firms. Some of the smaller firms are engaged in a larger than average proportion of charter business. While the charter services of Class I carriers, as a group, averaged 16% of revenues in 1978, Greyhound Lines received only 10% of its revenues from charter operations. Because charters generate longer trips (232 charter-miles versus 115 regular-route miles in 1976) and higher average passenger loads (31 charter passenger versus 18.5 regular-route passengers in 1976),[11] service of this type permits certain efficiencies of cost and operation. Management quality and operating flexibility are other factors that can certainly influence financial performance.

Data on profitability also suggest a relationship between financial performance and regional location. An ICC analysis of average 1976 operating margins revealed apparent differences among carriers operating in different regions of the country, as shown in Table III-6.

Table III-6
Average Class I Intercity Carrier
Operating Margins by Region
1976

Region	Operating Margin
Southwestern	10.5%
Pacific	9.5%
Southern	5.9%
Rocky Mountain	5.8%
New England	4.7%
Northwestern	3.9%
Central	2.5%
Midwestern	2.2%
Middle Atlantic	−0.1%
U.S. — Average	4.5%

Source: U.S. Senate Committee on Commerce, Science and Transportation, *Intercity Bus Service In Small Communities*, p. 20.

After combining these regions into four broader ones for statistical testing purposes, the Commission concluded that statistically meaningful differences in financial performance existed among carriers in two regions. Carriers in the South/Southwest were determined to be more profitable than carriers in the New England/Middle Atlantic area. Interestingly, the area that tends to be more rural and may contain a greater number of dispersed small communities thus appears to be more profitable than the populous Northeast, possibly because of the high levels of intermodal competition in the latter area. Because of the wide variability of financial returns encountered in the other regions, statistically meaningful differences were not apparent. The same study was unable to demonstrate meaningful differences in performance among the three classes of carriers, regardless of the region.[12]

Because major differences in profitability do exist, it is apparent that carriers with different characteristics can operate profitably.

INDUSTRY COSTS AND THE EFFECTS OF SIZE

A large portion of bus carrier expenses can be considered essentially variable over the short term.[13] As shown in Table III-7, for example, Class I intercity carriers had operating expenses totaling 88.5% of total costs in 1979. While some fixed cost components are contained in this category, most of the costs, such as labor, maintenance, advertising, and certain administrative expenses, are discretionary in nature or vary more or less directly with bus-miles traveled or with the geographic coverage of route structures. Portions of certain taxes, not considered part of "operating expenses" but totaling 6% of costs in 1979, also vary with bus-miles or passenger-miles. Depreciation on buses, a semifixed expense over the shorter term, was less than 4% of total Class I expenses in 1979.

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[10] *The Intercity Bus Industry, A Preliminary Study*, pp. 49-59, 91-96.
[11] *Ibid.*, pp. 54-55.
[12] *Ibid.*, pp. 55-59.
[13] *Ibid.*, p. 54.

Table III-7
Distribution of Class I Intercity Expenses
(Includes All Services)

	1978	1978	1979	1979
Total Expenses		100.0%		100.0%
Total Operating Expenses		87.7%		88.5%
Maintenance	12.3%		12.9%	
Transportation	35.9%		37.2%	
Station	17.5%		17.8%	
Advertising	3.9%		3.7%	
Insurance	4.7%		4.4%	
Administration	12.8%		12.5%	
Depreciation		3.9%		3.9%
Operating Taxes and Licenses		6.8%		6.0%
Operating Rents		1.6%		1.6%

Source: *America's Most Fuel Efficient Transportation Service, The 1980 Report From the American Bus Association*, p. 29.

With relatively low fixed costs, it is clear that the bus industry lacks significant cost-related barriers to entry, and the existence of over 1,000 small carriers, some earning higher operating margins than the largest carriers, confirms the feasibility of small-scale operations. The major required investment, the bus itself, can be debt-financed in most circumstances and is available used at reduced prices. Terminal functions and space can be obtained from either existing air, rail, and bus terminals, or from municipalities. They can also be obtained at hotels, filling stations and local stores, or "park and ride" facilities. In addition, tickets can be sold through independent agents. Local store proprietors and other independent agents, in fact, now account for a significant percentage — perhaps as much as 90% — of the industry's ticket locations.[14]

The economic viability of small carriers also suggests that substantial operating economies of scale do not exist in the industry. Statistical analysis by the ICC and independent researchers has indeed failed to show that increases in bus-miles operated result in lower costs per bus-mile.[15] The fact that the largest carriers are subject to the wage demands of unionized drivers raises the possibility that the industry may even experience certain *dis*economies of scale.

While operating economies of scale are absent, large carriers may benefit, in business development and marketing, from the public recognition that can accompany extensive operations carrying a common name. Travelers may associate large size with the availability of a wide variety of scheduling and route options, a perception that can be reinforced by large-scale advertising. As a result, they will often call the larger carriers first on the expectation that these firms are more likely to provide compatible routes and convenient scheduling. This tendency may provide the larger carriers with somewhat more regular route business than their fares, schedules, or quality of service alone might justify. However, as shown above in Table III-5, such marketing advantages do not appear to have resulted in increased profitability for the larger carriers.

Another potential advantage of size (or perhaps breadth) is more substantive in nature but is meaningful only to the minority of passengers planning long trips.[16] Bus carriers with large regional or nationwide routes can often provide one-bus or one-carrier through service, minimizing the inconveniences of baggage handling, terminal switching, and layovers. This advantage is especially relevant in the context of intermodal competition.

Thus, while large-scale operation has some benefits, the evidence suggests that significant economies of scale are not present in the industry and that smaller carriers can be effective and profitable competitors.

COMPETITION

Competition within the Industry

Composition of the Industry

The greatest portion of the current regular-route structure was already in place when federal regulation of entry began in 1935. The number of regularly scheduled route-miles (including duplication) served by Class I carriers increased less than 7% between 1939 and the mid-1970s, and the ICC has granted few new regular-route operating authorities over the years.[17]

From this relatively stable route network, many regular-route carriers grew through mergers and route purchases. These practices were encouraged by the ICC's regulation of entry, which tended to block carriers from freely pursuing internal route expansion. The increasing industry concentration that has resulted is reflected in industry statistics showing that the number of carriers in 1975 had dropped to less than half of the 2,120 ICC-authorized companies operating at the onset of federal regulation.[18] Since 1976, during a period when the ICC began relaxing certain restrictions, about 150 companies have joined the industry.[19]

Characteristics of Competitors

The 1,150 companies in operation in 1979 ranged from small, single-bus, family operations to large carriers operating scheduled national and regional route networks, such as Greyhound Lines and Trailways, Inc., Bonanza and MK&O, respectively. Small business appears to be the rule rather than the exception, especially in the charter business, where flexibility and favorable labor costs help the Class II and Class III carriers to excel. In addition, entry has been relatively easy and fares flexible in the charter business during the last few years, creating a free-market type of environment that appears to have encouraged new entrants.[20]

While smaller carriers also operate regularly scheduled intercity and commuter routes, intramodal competition in intercity regular-route and package express business exists primarily among the Class I carriers, because they have the most extensive route structures.

Of the Class I carriers, two (including owned and controlled subsidiaries) — Greyhound Lines, Inc., and Trailways, Inc. —

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[14] Estimate from the American Bus Association.

[15] *The Intercity Bus Industry, A Preliminary Study*, p. 58, and *The Intercity Bus Transportation Industry: An Industrial Organizational Study*, pp. 15-17.

[16] The *1977 Census of Transportation* shows that almost 72% of all intercity bus trips over 100 miles one-way covered less than 600 miles roundtrip. Almost 50% covered less than 400 miles. These statistics understate short distance travel because the *Census* excluded roundtrips of under 200 miles and did not include students and military passengers. The average (one-way) regular-route passenger trip on Class I intercity carriers, according to the American Bus Association, was 123 miles in 1979.

[17] *Intercity Bus Service In Small Communities*, A Report by the Secretary of Transportation, Neil Goldschmidt, U.S. Department of Transportation, January 1980, pp. 10, 11.

[18] *Ibid.*

[19] *America's Most Fuel Efficient Transportation Service*, p. 28.

[20] *Intercity Bus Service In Small Communities*, p. 11.

collected approximately 62% of total recognized industry revenues in 1979. Both carriers are often categorized as "national" because their route structures facilitate single-line travel over extended distances. This structure may often be a convenience for long-distance regular-route travelers, but is perhaps an impediment to providing full flexibility in local scheduling and service. These carriers earn significant revenues not only because of the broad geographic scope of their operations, but also because their average trip lengths are probably longer than those of the industry as a whole.

Greyhound Lines is clearly the industry leader in passenger revenues, as Table III-8 shows. However, Trailways, Inc., enhances its position in long distance traffic through its network of over 35 independent affiliates. The "Trailways" entry in the table reflects revenues collected by the 14 wholly owned subsidiaries of Trailways, Inc., thereby understating revenues generated by the total system identified as "Trailways." Trailways, Inc., and these independently owned and managed carriers maintain interline agreements concerning schedule coordination, equipment interchange, common trademark usage, and marketing. (The third largest Class I intercity carrier, Carolina Coach, is one such independent affiliate of Trailways, Inc.)

Table III-8
Class I Revenues — 1979
($ Millions)

	All Services
Greyhound Lines, Inc.[a]	$ 728.1
Trailways, Inc.[a]	$ 279.9
Transport of New Jersey[b]	$ 82.7
Carolina Coach	$ 22.5
Willett Motor Coach[b]	$ 16.1
Bi-State Development — Missouri/Illinois Metro	$ 14.6
Maplewood Equipment Company[c]	$ 13.6
Connecticut Limousine	$ 12.4
Hudson Transit Lines	$ 12.2
Rockland Coaches[b]	$ 11.2
Jefferson Lines, Inc.	$ 11.1
Bonanza Bus Lines	$ 9.6
All others (29 companies)	$ 170.9
Total Class I (59 carriers)[d]	$1,384.9

[a] Revenues include wholly owned subsidiary carriers. Greyhound Lines and Trailways, Inc., own 5 and 13 Class I carriers, respectively.

[b] Predominantly local or suburban and charter carriers. Transport of New Jersey is owned by the State of New Jersey.

[c] Wholly owned subsidiary of Transport of New Jersey.

[d] There are 60 Class I carriers, but data are unavailable for Airport Limousine Service of Newark, New Jersey.

Source: Revenue data from QPA reports submitted to the ICC by Class I carriers.

The nature of regular-route competition within the industry is more complex than a simple comparison of revenues might imply. Many of the independent carriers, for example, have strong regional bases and vigorously compete against Trailways, Inc., and Greyhound Lines on routes within their regions. Table III-9 compares Trailways, Inc., and Greyhound Lines to the rest of the ABA-recognized carriers. Carriers other than Greyhound Lines and Trailways, Inc. account for 69% of buses owned, 94% of charter passengers, and 78% of charter passenger revenues. In addition, 56% of package express revenues were earned by carriers other than Greyhound Lines and Trailways, Inc.

Table III-9
Intercity Bus Industry In the United States — 1979
(as a percent of total)

	Greyhound[a]	Trailways Inc.[b]	All Other Carriers[c]	Total
Revenues	43	17	40	100
Passengers	17	6	77	100
Bus — Miles	37	17	46	100
Passenger — Miles	30	10	60	100
Charter				
Passengers	4	2	94	100
Passenger Revenues	13	9	78	100
Package Express Revenues	28	16	56	100
Buses Owned	21	10	69	100

[a] Does not include wholly-owned subsidiaries, which account for less than 4% of total carrier revenues.

[b] Includes Class I subsidiaries.

[c] Includes operations of Class I, II and III carriers.

Sources: 1979 Greyhound MP 1 financial and statistical report to the ICC. American Bus Association Statistics.

The relative competitive position of the different carriers is complicated by the fact that revenue and passenger statistics do not take into account the relative profitability of the business as an indicator of the ability to compete effectively and grow. If the ICC hypothesis is correct that much regular-route business is not profitable by itself, the relatively high numbers of stops served and revenues collected by Greyhound Lines, and Trailways, Inc., may in fact represent a competitive handicap if a portion of these stops and revenues are unprofitable at existing fare levels.

Intermodal Competition

Intermodal Trends

Bus carriers encounter some of their most serious competition from the private auto, the deregulated airlines, and the directly subsidized passenger train network. While the number of total intercity passengers using all modes had, by the end of 1979, increased approximately 13% since 1970, the intercity bus companies competed with each other during most of the 1970s to satisfy shares of declining overall demand. Between 1970 and 1979, airline and rail passenger traffic increased a total of 50% and 6%, respectively, while bus traffic dropped almost 13%.[21] The extent to which air deregulation has even more drastically affected the demand for bus travel and other modes of transportation is difficult to ascertain, because the change is so recent. In any case, deregulation has occurred in a period of unprecedented inflation, economic volatility, and rising fuel costs, the influence of which hinders any attempt to accurately isolate the effects of deregulation. Preliminary passenger-mile information for the post-1977 period is shown in Table III-10.

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[21] See Table A-3 in the Appendix.

Table III-10
Intercity Travel by Mode
(Billions of Passenger-Miles)

Mode	1978 Passenger — Miles	1978 Percent	1979 Passenger — Miles	1979 Percent
Private Automobile	1,316.9	84.7	1,287.9	82.9
Public Transport	225.0	14.5	251.7	16.2
— Air	189.1	12.2	213.5	13.7
— Rail	10.5	0.7	11.6	0.7
— Bus	25.4	1.6	26.6	1.7
Other	13.4	0.8	14.1	0.9
Total	1,555.3	100.0	1,553.7	100.0

Source *Transportation Facts and Trends*, Transportation Association of America, p. 18

Between 1978 and 1979, total intercity passenger-miles declined 0.1%. The decline came entirely from the use of private automobiles. Public transport passenger-miles increased almost 12% and represented over 16% of total intercity passenger-miles in 1979. However, the largest share of the increase in the use of public transportation came from air, up 12.9% in 1979. Rail increased 10.5%, while bus passenger-miles increased only 4.7%, reversing a long downward trend but clearly not showing the growth rate experienced by other public transportation modes.

There is little doubt that the increase in air transport is partly due to deregulation and that a portion of the traffic moving by air may otherwise have used the bus. Declining fares will continue to be a major factor. For example, a new Washington/New York air shuttle service which commenced in December 1980 offers fares of $49 during daytime and $29 during nighttime. It is estimated that half of the traffic using the service will be drawn from modes other than the existing air shuttle.[22]

Federally subsidized rail revitalization, which began with the establishment of Amtrak in 1971, has also affected bus traffic and revenue in certain areas, especially in the Northeast Corridor where Amtrak operates 27% of its total passenger-miles.

As shown in Table III-11, total bus passenger-miles decreased nationally during the 1972-1976 period by an average of more than 7%, compared with an average nationwide increase by Amtrak of 41%. In the Northeast, Class I bus carriers' passenger mileage decreased almost 26% from 1971 to 1976, while Amtrak passenger-miles increased 33% between 1972 and 1976. (Some losses in bus traffic and revenues are certainly attributable to airline gains in addition to Amtrak's growth.)

Table III-11
Comparison of Passenger-Miles on Amtrak and Class I Buses in the Northeast Corridor and the Rest of the United States in 1971, 1972, and 1976

	1971	1972	1976	Percent Change 1971-1976	Percent Change 1972-1976
Bus[a]					
Northeast Corridor (NEC)	1,461	[b]	1,084	—	−25.8
Rest of United States	12,643	[b]	11,476	− 9.2	—
Total Bus	14,104	13,576	12,560	−11.0	− 7.4
Amtrak					
Metroliner	[c]	307.2	307.1	—	0.0
Conventional NEC	[c]	560.9	850.3	—	51.6
Total NEC	[c]	868.1	1,157.4	—	33.3
Rest of United States	[c]	2,169.9	3,132.6	—	44.4
Total Amtrak		3,038.0	4,290.0	—	41.2

[a] Regular-route passengers only.

[b] Data unavailable.

[c] Data not meaningful because Amtrak began operations in mid-1971.

Source *Amtrak's Economic Impact on the Intercity Bus Industry*, U.S. General Accounting Office, January 12, 1979, p. 12.

Although it is too early to tell if the recent deregulation of truck transportation may also affect the bus industry, deregulation permits an increased number of trucking companies to compete for package express business, which is a substantial source of incremental profit to the bus industry. This aspect of the bus industry's business is already experiencing competition from specialized air/ground package express services such as those provided by Federal Express, Emery Air Freight, and the U.S. Postal Service (Express Mail).[23]

Passenger Transportation Revenues

The average intercity bus carrier generates lower overall revenues than the other common public modes of transportation. As shown in Table III-12, average air carrier revenues in 1979 exceeded those of the bus industry and Amtrak, combined. Furthermore, the domestic passenger revenues of each of five air carriers exceeded the total recognized revenues of the bus industry in 1979.[24]

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[22] "Eastern Coast Dogfight," *Forbes*, Nov. 24, 1980.

[23] *The Intercity Bus Industry, A Preliminary Study*, pp. 52-53.

[24] The airlines were United, American, Eastern, TWA, and Delta. Eastern revenues include Canada.

Table III-12
Comparison of Intermodal Revenue
Amtrak, Bus, Air
1979
($ Millions)

Mode (Number of Carriers)	Total Passenger Revenues	Passenger Revenues of Largest Carrier(b)	Average Carrier Revenues
Air-Certified Domestic Trunk, Local Service, and Other (39)(a)	$18,463.2	$2,751.1	$559.5
Amtrak (1)	$ 321.0	$ 321.0	$321.0
Bus — Class I Intercity (46)	$ 987.9	$ 577.6(c)	$ 21.5

(a) Data available for only 33 of the 39 carriers. Does not include "commuter" airlines.
(b) Largest bus and air carriers, by domestic passenger revenues, were United Airlines and Greyhound Lines in 1979.
(c) Passenger revenues for Greyhound Lines do not include wholly-owned subsidiaries, which accounts for less than 4% of Greyhound Lines total revenue.

Source: See Footnote 25.

Passenger Fares

Certainly one of the major factors contributing to the decline in bus traffic, in the Northeast and elsewhere, is that the deregulated airlines and heavily subsidized passenger trains have reduced, and in some cases eliminated, the intermodal price advantages traditionally enjoyed by the bus industry. Table III-13 shows the surprising degree of parity among special or excursion fares between selected major city-pairs in 1980.

Table III-13
Intermodal Fare Comparisons — One-Way, Coach
December 1980

Mode	NY-L.A.	NY-Boston	Wash. DC-Boston	S.F.-L.A.	Atlanta-Miami
Air:					
Coach	$402.00	$56.00	$103.00	$66.00	$132.00
Special(a)	149.00	39.50	57.00	38.00	99.00
Rail:					
Coach	240.00	26.00	53.00	36.50	none
Special(a)	176.00	17.00	32.00	31.50	none
Bus:					
Coach	234.20	27.70	53.40	25.83	63.35
Special(a)	97.15	(b)	(b)	(b)	(b)

(a) Excursion or special fare. Special conditions often apply. Some special fares are offered only on a roundtrip basis.
(b) No special fare offered.

Source: Air: *The Airline Guide*, December 1980, and Tour Plan, Inc., Washington, D.C.
Rail: Amtrak published fares for December, 1980.
Bus: Greyhound Lines, Inc.

Passenger Perceptions

A period of decreasing fare differentials, the convenience of the automobile, and the greater speed of air and, on some routes, rail transportation, have clearly contributed to passenger diversion from the intercity bus. General consumer preferences reflect these factors, as shown in Table III-14. When asked to rate their first and second choices among four modes of transportation (automobiles, airplanes, buses, and trains), a nationwide sample of travelers, responding to a January 1978 survey commissioned by Amtrak, named automobiles and airplanes first, followed by trains and buses.

Table III-14
Transportation Choices in Rail Corridors

Mode(a)	First Choice	Second Choice	Total First and Second choice
Automobiles	45	25	70
Airplanes	38	26	64
Trains	9	25	34
Buses	5	18	23
Not sure	3	6	9

(a) Sample was taken from 884 people.

Source: U.S. General Accounting Office Report, *Amtrak's Economic Effect on the Intercity Bus Industry*, January 1979, p. 58.

Subsidization

Federal subsidization can affect competition among modes to the extent that it alters the cost and price structures of the carriers. Direct subsidies to cover operating costs are available to Amtrak and to airlines operating certain routes. Direct subsidies for bus carriers have been available only under limited programs enacted in a few states. In addition to direct subsidies, all modes of transportation are indirectly subsidized to varying degrees, although the breakdown of indirect subsidies among the various modes of public transportation cannot be calculated precisely. (Part of the problem with modes using public roads is the difficulty in assigning an equitable share of highway costs to the carriers. Consequently, it is difficult to determine the extent to which taxes paid by bus and truck carriers cover those costs.) However, on the basis of total subsidy, it is evident that other modes of transportation are subsidized to a significantly higher degree than buses, creating an artificial competitive disadvantage for buses and leading to potentially wasteful inefficiencies.

Tables III-15 and III-16 show the extent of federal and state financial aid to transportation during selected years.

Table III-15
Federal Budget Outlays for Transportation
1970-1980
($ Millions)

Sector	1970	1975	1980(P)	
			Outlays	Percent of Total
Highways(a)	$4,531	$ 5,006	$ 8,150	44.7%
— All Other	4,517	4,991	8,126	44.6%
— Buses	14	15	24	0.1%
Mass Transit	124	929	2,500	13.6%
Railroads	21	562	1,440	7.8%
Air Transportation	1,422	2,408	3,300	17.9%
Other Transportation	1,303	2,135	3,030	16.4%
Total	$7,401	$11,040	$18,420	100.0%

P = Projection
(a) Approximate modal shares are provided for illustrative purposes. The bus share is based on the bus share of total miles travelled on highways in 1978 (0.3%). This statistic was provided by the Department of Transportation's Highway Planning Service.

Source: U.S. Senate Committee on Commerce, Science and Transportation, *Intercity Domestic Transportation System for Passengers and Freight*, p. 50.

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[25] Air:
Air Transport 1980, Air Transport Association of America, Washington, D.C., pp. 16, 21, 23, 29.
Rail:
Yearbook of Railroad Facts, 1980 Edition, Association of American Railroads, Washington, D.C., p. 62.
Bus:
Annual Report from Greyhound Lines to the ICC, Form MP-1, December 31, 1973, p. 9. Also, *American's Most Fuel Efficient Transportation System, The 1980 Report from the American Bus Association*, p. 28.

Table III-16
State and Local Government Expenditures from Own Sources
($ Millions)

Sector	1965	1970	1974	Percent of Total (1974)
Highways*	$10,174	$15,635	$19,717	92.2%
— All Other	10,144	15,588	19,658	91.9%
— Buses	30	47	59	0.3%
Air Transportation	345	887	1,048	4.9%
Other	276	444	625	2.9%
Total	$10,795	$16,966	$21,390	100.0%

*Approximate modal shares. See note to Table III-15.

Source: U.S. Senate Committee on Commerce, Science and Transportation, *Intercity Domestic Transportation System for Passengers and Freight*, p. 51.

Intermodal Competition — Summary

In summary, it is evident that various modes of transportation pose considerable competition to the intercity bus industry. In contrast with other modes, bus carriers have lagged significantly in growth of revenues and ridership. Compared to the bus, the private automobile offers convenience and a comparable travel speed; the train offers favorable prices and often higher speeds; and air transportation offers a significant time advantage, often with prices that compare favorably with bus fares. Finally, the operating costs of certain air routes and of Amtrak are directly subsidized — an additional factor in intermodal competition.

DEREGULATION AND BUS INDUSTRY ECONOMICS

Experience to Date

In assessing the possible effects of deregulation on bus industry competition, it is useful to consider the changes emerging as a result of the 1978 legislation deregulating air transportation as well as to summarize more recent regulatory changes in the trucking and rail industries. Intrastate bus service in Florida was deregulated in 1980, and although the process has been underway for only a short time, a look at early results provides some interesting insights.

Air

The *Airline Deregulation Act*, passed in October 1978, significantly diminished or removed the authority of the Civil Aeronautics Board to set air transportation policies, certificate new carriers, award new routes, regulate fares, and reduce or suspend air service. Airline deregulation will be a gradual process, culminating in the dismantling of the Board by 1985. Many of the functions formerly allocated to the CAB will be transferred to other government agencies (such as the Departments of Justice and Transportation), and others will be phased out entirely.

The effects of airline deregulation have been significant, although in recent months the rapid growth spurred by deregulation has been dampened by adverse conditions in the economy.

- *Industry Changes.* Airline traffic increased substantially in 1979. Air fares also increased but not at the same rate as airline operating costs. During the two years after deregulation, air fares increased 6%, while airline operating costs and the consumer price index went up 30% and 20%, respectively.[26]

However, deregulation and higher demand have brought about enhanced airplane productivity, which has helped offset increased costs. Load factors in 1979 averaged 65%, compared to 55% before deregulation. The annual rate of decrease in airline operating costs per revenue ton-mile accelerated to 7.3% after deregulation, from 4.3% before deregulation (in 1976 dollars).[27] Under deregulation, most air carriers have adjusted their route structures, and some smaller carriers have added longer routes in an effort to retain passengers formerly delivered to the larger, long-haul carriers.

Some of the smaller carriers that originally opposed full deregulation have done well in the new environment. E.I. Colodny, the Chairman of USAir (formerly Allegheny) for example, opposed air deregulation in 1977. He stated:

> "Some carriers have very significant resources. . . . This is part of the key issue of concentration raised by the proposed legislation. I would write legislation that kept American, United, Northwest, and Delta from getting a single new route mile for at least five years. . . . (Those carriers) have the resources to whomp an Allegheny, TWA, or anybody they want."[28]

However, in 1980, Mr. Colodny told the Washington Post that his original concerns were unjustified.

> "I must confess that the concerns I originally expressed concerning deregulation have yet to be realized . . . We fought the wrong battle."[29]

Colodny characterized his carrier as having done "exceedingly well" under deregulation.[30] Regulatory reform in the bus industry can be expected to produce similar opinion reversals, as companies take advantage of their new flexibility.

- *Air Service Patterns.* Total air service levels increased after deregulation. A comparison of the week of October 1, 1977, with the same week in 1979 shows a 15% increase in total weekly departures and a 12% increase in the number of available seats. Weekly scheduled service from the smallest communities ("non-hubs") to larger cities and towns ("small, medium, and large hubs") showed a surprising increase of 16%, but direct service between the smallest communities dropped about 5%.[31]

In the period between the passage of the Airline Deregulation Act and July 1980, nine states experienced decreases in air service resulting from the provisions of the Act. However, all but one community continued to receive air service by at least one certificated airline, and noncertificated, commuter-type airline service has often replaced service offerings in communities losing some certificated service.[32]

- *Safety.* Safety levels in the airline industry appear to remain unchanged since deregulation.[33]

Trucks[34]

On June 20, 1980, Congress passed the *Motor Carrier Act of 1980* to amend the Motor Carrier Act of 1935. The objective of the legislation was primarily to enhance competition within the trucking industry by removing or reducing regulatory burdens.

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[26] *The Changing Airline Industry: A Status Report Through 1979*, U.S. General Accounting Office, September 12, 1980, p. 1.

[27] *Ibid.*, p. 2.

[28] Edward M. Kennedy, Albert V. Casey, M. Lamar Ruse, Edwin I. Colodny, and John E. Robson, "Competition in the Airlines," (transcript of forum discussion), *Regulation*, November-December 1977, p. 32.

[29] Carole Shifrim, "Deregulation Puts USAir in Fast Lane," *Washington Business* tabloid of *The Washington Post*, November 24, 1980, p. 15.

[30] *Ibid.*

[31] *The Changing Airline Industry*, p. 14.

[32] *Ibid.*, p. 15.

[33] *Ibid.*, pp. 20-21.

[34] *Motor Carrier Act of 1980*.

The Act encourages free entry by modifying the test of "public convenience and necessity" to place the burden on the protestant to prove that proposed service is unjustified. This liberalized entry policy is closely tied with other sections of the Act that remove backhaul restrictions, increase price flexibility, reduce antitrust immunity for collective determination of single-line rates, and streamline procedures for granting authority to applicants.

The initial results of deregulation, as reported by the ICC, are positive. New applications for motor carrier authority show an upward trend and reflect a broadening of geographical coverage by existing carriers as well as entry by new firms. For the fiscal year ending September 12, 1980, over 21,000 operating authority grants were made, compared to approximately 12,000 and 9,000 in 1979 and 1978, respectively. During October 1980, alone, over 3,500 grants were made.[15]

Rates have also dropped somewhat since deregulation, especially for full truckloads. Less-than-truck-load rates have also been reduced in some cases, and carriers have frequently taken independent fare initiatives.

One carrier was quoted by the ICC as having reported concerning deregulation that although there are still "many unanswered questions, there is not a lot of turbulence or panic" in the marketplace under deregulation.[16]

Rail[17]

The *Staggers Rail Act of 1980* deregulates the railroad freight industry in several ways. It creates "rate adjustment zones," within which rates can be established free from ICC intervention. Under the Act, restrictions on entry are eased, antitrust immunity for single-line rates is eliminated, and new limitations are placed on joint-rate discussions. The Act also facilitates railroad mergers and allows the ICC to further exempt railroads from regulation. The legislation was passed in an effort to foster competition, establish reasonable rates, and promote safe and efficient rail transportation in an environment requiring minimal federal intervention. It is still too early to measure the effects of this newly passed legislation on the industry.

Bus Deregulation in Florida[18]

The intercity bus industry was deregulated in Florida on July 1, 1980, through a "sunset" or automatic repeal process. Free entry and exit are allowed, and collective fare-setting procedures have been abolished. Preliminary observations indicate several positive results. A recent survey of the transportation industry in Florida showed that the immediate effects were:[19]

- Price adjustments, both up and down.
- Some routes added, others dropped.
- A surge of new ridership on some bus lines where fares were cut and routes added.

A spokesman for Trailways, Inc. reviewed, in a recent press release, his carrier's positive experience with deregulation in Florida:[40]

- Florida city service was altered and new or improved service was added (to 24 cities).
- It is true that service in certain cities was suspended by Trailways, Inc. following deregulation. While most service dropped consisted only of one schedule per day, the company did cease operations (to 2 cities). Even in these instances, however, deregulation worked because those runs were picked up and service improved by a smaller bus firm.
- Trailways, Inc. is beginning two . . . (fare) promotions in Florida, made possible by the positive business climate of deregulation.

A Trailways spokesman has subsequently stated that reduced rates after deregulation have added as much as 20% more ridership on some runs.[41]

Deregulation in Arizona

On November 4, 1980, voters in Arizona approved by a large margin a proposal that deregulates the bus and truck industries in that state in 1982. It is interesting to note that voters in rural as well as urban areas overwhelmingly favored deregulation.

The Need for Regulatory Reform

Regulation of the bus industry was originally justified by the "natural monopoly" that was perceived to be a characteristic of the bus industry. Large economies of scale were believed to accrue to carriers and, hence, competition was constrained to avoid disrupted service and to facilitate carrier growth. Fares were regulated to prevent abuse by those carriers benefiting from the various regulated route monopolies and to assure continued service on all authorized routes.

It is apparent, however, that the bus industry does not actually have the large fixed capital base or high fixed cost structure that typically justifies protection afforded "natural monopolies." Furthermore, it is evident that federal and state regulatory policies evolving from the original perception of the industry have, in general, hindered many carriers from adequately responding to opportunities within the industry and challenges posed by inflation and intermodal competition. The financial decline of the industry is, at least in part, a reflection of regulation, and the results are already showing up, for example, in the deferral of capital expenditures by some carriers. In recent statements supporting a rate filing before the ICC, Greyhound Lines Vice President and Controller W. F. Tritton commented on the importance of one kind of capital investment — buses:

> "It is imperative that the average age of the fleet be held steady to be both attractive to the traveling public and hold down the costs of maintenance."[42]

Trailways, Inc's., Vice President and Controller D. V. Taylor noted in support of the same filing that:

> "We have been unable to replenish our bus supply satisfactorily. A continuation of this unsatisfactory

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[15] *Highlights of Recent Activity In the Motor Carrier Industry*. Staff Report, Office of Policy and Analysis, Interstate Commerce Commission, December 4, 1980, pp. 1, 2.

[16] *Ibid.*, p. 8.

[17] *Staggers Rail Act of 1980*.

[18] Representative George Sheldon speaking at the Conference on Intercity Bus Transportation, September 1980.

[19] *Florida Bus, Truck Industry Survives Deregulation*. The Washington Post, December 26, 1980, p. c7.

[40] Bill Lambert, Press Bulletin from Trailways, Inc., Dallas, Texas, November 1980.

[41] *Florida Bus, Truck Industry Survives Deregulation*.

[42] Statement of W. F. Tritton, Vice President-Controller of Greyhound Lines, in *Summaries of Statements of Support of Proposed Increases of 9% in Interstate Passenger Fares and Express Rates*, June 30, 1980, p. 26.

> situation will lead to deterioration in the quality and quantity of bus service available to the public."[43]

As a result of the failure of regulation to assure adequate financial returns, many carriers have been forced to cut back marginal or unprofitable service, to the extent possible, in an effort to restore financial health. Theoretically, such cutbacks should generally be unnecessary in a regulated industry, as fares would be set high enough on viable routes to cover losses incurred on unprofitable ones. However, the private automobile and deregulated, intermodal competition have made regulation, as now structured, essentially unworkable.

Proponents of some form of continued economic regulation or restriction often suggest the possibility of predatory behavior by the largest carriers as justification for their proposals. This is not so much an issue relating to unfair competitive practices, in which a carrier of any size could engage given certain circumstances, but rather one of the alleged advantages of size and the existence of conditions that might favor predatory behavior. Supporters of regulation also cite the possibility of service cutbacks in small communities as an additional incentive for regulation.

It is unlikely that the existing large carriers will represent an undue competitive threat to well managed smaller companies. The high share of revenues earned by the industry leaders might, theoretically, jeopardize the financial health and competitive effectiveness of smaller carriers if the bus industry were characterized by extensive economies of scale or experience curve effects. However, as noted earlier, large size does not necessarily mean lower costs in the industry. The concept of the experience curve probably has limited applicability to the industry, as well. For example, while increasing "experience" over time might be expected to reduce gradually the per-unit direct cost of bus maintenance, new or smaller carriers can achieve much the same effect by farming out maintenance work or by hiring experienced mechanics.

Predatory behavior from bus industry leaders under deregulation is equally inconsistent with reality. For predation to "pay," the promise of extensive "monopoly profits" must exist at some future point — an unlikely prospect in an environment of strong intermodal competition and free entry. Competitors would quickly take advantage of excessive profits by cutting prices on a monopolist's routes. Structural characteristics that could favor predation — extensive and immobile production assets and high fixed costs — are not characteristic of the bus industry. There are, in fact, few business assets as mobile as a bus.

The ICC does not appear to share any industry concerns about the size of the larger carriers. Mr. Sanford Rederer, a spokesman for the Commission, made the following points about size in a recent conference on bus deregulation:[44]

In the marketplace, size seems to have some penalties:

- Bigger companies in industries which don't have continuing efficiencies of scale seem to have higher costs. It's likely that Greyhound would have higher costs than potential entrants, just the same as United and American have higher unit costs than smaller carriers.
- Large companies have problems responding to the changing conditions in local markets. A small company attuned to a local market, usually resident in a local market, will have the scheduling and responsiveness to local needs that is necessary to be successful in that market.
- Large companies have equal exposure and power from their networks. In a free-entry situation, Greyhound will not be faced by one entrant wanting to operate one route, but rather by hundreds of potential entrants anywhere around the country.

Additional insight into the issue of size, as well as into the potential for lost service in small communities, is provided by the emerging results of bus deregulation in Florida and national air deregulation. In both cases, competition has been enhanced by new entrants, and service to smaller communities has not been significantly affected. In fact, in smaller communities, the departure of larger carriers has often proven a boon to smaller companies providing replacement service. Smaller carriers, both in the air industry and in the bus industry in Florida, are thriving in the new environment and appear to be successfully capitalizing on the cost advantages and on the added flexibility that they often have as compared to much larger competitors.

Similar insights are provided by the deregulation of the Florida trucking industry.[45] It was mostly the larger companies that lost business with deregulation. Smaller truckers have been able to take advantage of new opportunities. A recent Miami survey found that the total number of trucking firms in the state jumped about 25% after deregulation.

Thus, the cost and inefficiency of regulation cannot be justified economically, and it does not appear to be justified by concerns about public policy. More effective methods are available for achieving the public policy goals formerly met by the common carrier (e.g., providing service on marginal, low-demand routes), such as service by smaller, flexible carriers, or through the direct subsidy options under consideration.

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[43] Statement of D. V. Taylor, Vice President-Controller, Trailways, Inc., in *Summaries of Statements of Support of Proposed Increases of 9% in Interstate Passenger Fares and Express Rates*, June 30, 1980, p. 13.

[44] Remarks of Stanford Rederer, Interstate Commerce Commission, before the Conference on Intercity Bus Transportation, Washington, D.C., September 1980.

[45] *Florida Bus, Truck Industry Survives Deregulation.*

IV. THE PUBLIC INTEREST

DEFINITIONS AND ISSUES

The public interest has been an important topic in discussions of deregulation. In a recent study of the intercity transportation industry,[1] the Senate Committee on Commerce, Science and Transportation defined transportation in the public interest in the form of eight major public objectives:

- Economic efficiency.
- Service.
- Industry viability.
- Reasonable rates.
- Reduced public/social costs.[2]
- Energy conservation.
- Protection of the environment.
- Safety.

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[1] Senate Committee on Commerce, Science, and Transportation, "Intercity Domestic Transportation System for Passengers and Freight," 1977, pp. 15-23.

Measuring how well the above objectives have been achieved can be both difficult and arbitrary. For example, "good service" means a number of different things to different passengers. Choosing appropriate units of measurement as well as the measurement itself can be difficult and fraught with assumptions. The Committee suggested the following quantitative measurements to monitor progress in achieving its objectives:

- Economic efficiency: average cost per passenger-mile, operating ratio.
- Service: frequency of scheduled departures, available capacity, trip time, and accessibility.
- Industry viability: return on investment.
- Reasonable rates: difficult to define, but public outcry or the existence of unreasonably large cross or direct subsidies are often used as measurements.
- Energy conservation: Btu's per passenger-mile.
- Protection of the environment: grams of pollutants per passenger-mile.
- Safety: rates of fatalities, injuries, and property damage per passenger-mile.

These objectives exhibit complex relationships. Economic efficiency and service, for example, may be conflicting objectives, because some forms of service can be achieved only by increasing costs. Likewise, improvements in service are often also associated with poor energy efficiency and adverse environmental impacts.

There is a tendency to assume that goals involving the economic efficiency of the transportation industry and factors such as environmental and energy efficiency will somehow take care of themselves. The term "the public interest" is subsequently used frequently to refer only to service. As exemplified by the railroad industry's present condition, however, this restricted view of the public interest is myopic and, in the long run, detrimental to the very service it seems to focus attention on. Even so, service is an area of major concern, and merits additional discussion.

SERVICE

What Is Service?

Service may be defined in terms of both quality and quantity. The quality of service, which is often determined by competitive forces rather than governmental control, is defined in terms of speed, reliability, frequency, comfort and special facilities.[4] While quality is an important objective, it typically receives less attention from the government than the quantity of service.

The quantity of service has been defined as access to transportation and has long been subject to governmental control and influence.[5] The prevailing government view, as noted by strict state exit provisions, appears to be that existing service is to be preserved although the needs may have changed or vary enormously, and the costs of providing service may fluctuate widely, depending on traffic flows. This view contributes to an emphasis on the number of locations served rather than the percent of the population served.

This kind of emphasis has a number of problems. The first is the need to define a "location." For example, a city may have one centrally located airport but several bus stations or stops located within the city and the surrounding suburbs. While the second, or third, bus locations clearly improve access to transportation, they may do so at the cost of efficient scheduling, reasonable fares, or other efficiencies. To the extent that all the stations are adequately served by local transportation, the loss of one or more bus stations may not significantly affect access. This argument suggests that location should be defined in broader terms of accessibility to the bulk of the population in a given area. In the case of a city this area would probably be the city and its surrounding suburbs, as it is for the airport. In rural areas, location could be defined as the area within a radius of reasonable travel time for the bulk of the population in a given county or set of counties. Such a definition would depend on the geographical distances or time involved.

It seems clear that the general public views accessibility in these broader terms. In one major study comparing passenger preferences between transportation modes, buses and airplanes were perceived as almost equally available (65% versus 63%), even though airplanes served far fewer locations (14,600 versus 645).[6]

	Cars	Buses	Airplanes	Trains
Rated as "Available"	89%	65%	63%	42%
Number of Locations Served	All	14,600	645	432

A second problem with the "location" definition of service is that it diverts attention from the majority of bus riders. Seventy percent of bus riders on trips over 100 miles live in Standard Metropolitan Statistical Areas (SMSAs),[7] and 66% of bus trips over 100 miles in length are to SMSAs.[8] On shorter trips the percentages are much higher. While no data are available on the number of urban versus rural locations, the number of locations serving these urban riders probably is a relatively small percentage of the total number of bus locations.

Thus, statistics on accessibility based on the number of terminal or bus stop locations can be very misleading. They tend to draw a portrait of overwhelming accessibility to buses and poor accessibility to airplanes and trains. This picture of transportation is not what the average person sees, however. In fact, the general public sees virtually equal availability of bus and air transportation and slightly less access to train service.

Other components of service for air, rail, and bus transportation are rated on Table IV-1. It is interesting to note that in ease of reaching departure point, another component of availability, airplanes were rated as best (45%) with buses mentioned as second (30%). In view of the out-of-town location of most airline terminals, these data lead one to question what the term "availability" means in the context of accessibility to the actual departure point. The car is the only means of transportation that is readily accessible to 85% of the population by walking out the front door.[9] In the 1977 Michigan bus ridership study, it was found that 63% of the bus riders had at least one car in the family and 81% used some form of motor transportation to get to the bus.[8] Accessibility to bus transportation, then, is not a matter of walking down one's front door to the bus station. But riders take a car, taxi, or other form of local transportation to get to the bus, in the same way that they do to get to the train or airplane.

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[4] *Ibid.*, p. 16, and Lou Harris and Associates, "The Continuing Public Mandate to Improve Intercity Rail Passenger Travel," March 1978, pp. 5-7.

[5] "Intercity Domestic Transportation System for Passengers and Freight," pp. 15-23.

[6] Lou Harris and Associates, p. 7. Number of locations estimated by ABA Research Department.

[7] *1977 Census of Transportation*, "Bus Trips by Selected Traveller Characteristics," p. 35. A Standard Metropolitan Statistical Area is defined as containing either: (a) one central city of 50,000 or more inhabitants, or (b) a city of at least 25,000 that, together with adjacent areas, has a combined population of 50,000 (75,000 in New England) in a county with a population of over 75,000.

[8] *Ibid.*, p. 17.

[9] *The Intercity Bus Industry*, Interstate Commerce Commission, Washington, D.C., May 1978.

This intermodal comparison provides evidence of the increasingly strong nature of competition between the air and bus industries, in that buses and airplanes are rated almost equally well in terms of the cost of the trip (38% versus 36%). These results are markedly different from those of 1972, when the spread between bus and airline ratings was much greater (44% versus 29%). This differential is undoubtedly due to some sort of value perception, such as cost/value of time. Pervasive discount airline fares may have also affected this cost perception over the years.

The public defines service in terms of frequency of scheduled departures, available capacity, trip time, and accessibility from road areas. If one of these factors is emphasized to the exclusion of all others, the public's perception of the quality of service provided by the industry will suffer.

Table IV-1
The Best Way to Travel, 1978

	Air %	Train %	Bus %	Not Sure %
Cost of Trip	36	15	38	11
Personal Comfort	66	20	8	6
Safety	38	29	18	15
Chance to See Interesting Things	11	35	47	6
Reaching Destination Quickly	81	7	7	6
Flexibility on Departure Time	54	11	22	13
Prompt Arrival Time/Reliability	61	14	12	12
Friendly Helpful Attendants	66	11	8	16
Place of Departure Easy to Reach	45	15	30	10
Luggage Handling Facilities	51	14	17	18
Fast Reservations and Information Facilities	63	9	12	16
Direct Routing	51	10	27	13
% Times Rated Best in Service	83	0	17	—

Source: Lou Harris and Associates, *The Continuing Public Mandate to Improve Intercity Rail Passenger Travel*, 1978, p. 7.

Service to Major Centers

Urban travelers are the primary market for the bus industry. Even on trips over 100 miles in length, 70% of bus riders reside in SMSAs. On the shorter hauls, which characterize much of the ridership in the East, this figure is likely to be even higher.[9] Service to and from major centers has always been the mainstay of the industry, and while increasing air competition and car ownership have eaten into the longer haul, cross-country traffic, regional city-pairs still generate the major traffic flows.

Although service to and from cities constitutes a major part of the industry's business, the condition of many city terminals is a disincentive to bus travel for some passengers. Bus terminals are frequently located in the sections of cities that have most suffered from urban blight and vandalism, and unlike the passenger rail or air industries, the bus industry does not receive capital subsidies for the construction and refurbishment of terminals needed in some major centers.

Service to Small Communities

One of the concerns about bus deregulation is the level of service to small communities. With the increase in the number of automobiles in use, the need for bus service in small towns has changed over the years. As a result, intercity bus service in rural and small communities has decreased. Between 1969 and 1979, over 1,850 locations nationwide (16% of total locations served) have lost bus stops due to lack of demand.[10] During the same time period, carriers have added service points, particularly in suburban areas, to augment inner city terminals, which indicates the increasingly urban orientation of the intercity bus industry.

It is not clear that this loss of stops has resulted in a loss of "service." In many cases, the alternate routing may not be distant or it may be more efficient and offer more daily or weekly schedules, offer more choice in origins or destinations, and serve a greater number of potential bus passengers.

Current State of Service to Small Communities

A recent study of bus service to small towns showed that, in general, small towns averaged 50 passenger arrivals and departures per week.[11] The median distance traveled was 111 miles, which was comparable to the overall average trip distance for Class I carriers reported by the Interstate Commerce Commission. In contrast to nonstop service between large cities, however, the average number of stops between origin and destination for passengers in small communities was 5.6.[12] This factor has advantages and disadvantages for small town citizens. The major advantage is that the greater the number of stops, the more points are being served. The primary disadvantage is that the number of stops significantly reduces the quality of service by slowing down the trip and increasing operating costs.

The average fare paid by small town bus users in 1976 was approximately 11% higher per passenger-mile than the national average.[13] It is not clear to what extent this difference reflects the cost of providing service to small towns or less intermodal competition. One study of intercity bus service in New England found that the presence of rail competition caused bus fares to significantly decrease.[14] The cause for the fare reduction is difficult to determine, however, because often intermodal competition exists only where large numbers of people travel the route. With these higher load factors, resulting in operating efficiencies, carriers can afford to lower rates. Under existing regulation, of course, intramodal competition would be unlikely to result in fare differentials because of the knowledge of specific route costs that is shared at rate bureau meetings.

Financial Issues

It has been suggested that service to some smaller communities is unprofitable and that it is effectively subsidized by the relatively profitable routes between major cities.

Like the airline and trucking industries, the intercity

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[8] Michigan Highway Commission, *Intercity Bus Study*, 1977, pp. 6-7.

[9] Senate Committee on Commerce, Science and Transportation, *Intercity Bus Service in Small Communities*, 1978, p. 26.

[10] American Bus Association press release, 1979.

[11] Senate Committee on Commerce, Science and Transportation, *Intercity Bus Service to Small Communities*, 1978, p. 3.

[12] *Ibid.*, p. 4.

[13] *Ibid.*

[14] E. Pinkston, *The Intercity Bus Transportation Industry*, Yale University, 1975, pp. 113-115.

> bus industry is characterized by a substantial amount of internal cross-subsidization. That is, the relatively more profitable charter service helps to support the essential regularly scheduled service, and the regularly scheduled service between major population centers supports service to small towns where profits are marginal or non-existent.[15]

Little hard evidence of cross-subsidization of small town routes by major city routes has been developed, perhaps because data on specific routes are difficult and expensive to collect.

One way to examine the financial effects of cross-subsidization is to compare the operating results of companies that might be expected to serve more small rural communities with those of companies that typically serve larger urban communities. In fact, the ICC found that companies operating in the South and Southwest, which tend to be rural and characterized by long travel distances, are more profitable than those in New England and the urban Middle Atlantic regions.[16] The data, therefore, do not support the claim that service to small communities is necessarily less profitable than service between major cities.

Issues of Public Policy

The number of individuals in small communities affected by bus deregulation may be very small. Even in the most rural region, the Mountain West, where residents make 3% of their trips over 100 miles by bus, the cancellation of 10% of all bus service originating outside metropolitan areas would affect only 0.15% (i.e., 1 in 666) of all person-trips over 100 miles. In many cases, riders would have the option of using automobiles or another mode of transportation. In Arizona, which recently voted to deregulate its bus industry, rural voters did not appear to be concerned about accessibility. In fact, these residents, along with those in urban areas, voted overwhelmingly for the deregulation measure.[17]

Data on accessibility show that most individuals must drive or take a cab to get to public transportation and that the general public often has a choice of modes available within driving range. Car ownership per household in rural or geographically diverse areas is substantially higher than in urban or geographically concentrated areas (52.1% of households own a car in non-metropolitan areas versus 45.3% in metropolitan areas; 49% of total households own a car in the West versus 45.1% in the Northeast).[18] The relationship is true of those in small communities as well as in metropolitan areas. Service is available; the issue for all intercity modes is how far one must drive or use local transit to reach the intercity mode.

The fact that individuals in small towns are already paying higher bus fares per passenger-mile (11%) suggests that bus companies are attempting to recover the incremental costs of service to small communities caused by the many stops and low utilization. If the industry were deregulated, bus companies might increase the differential to cover fully the cost of doing business in the small communities they continue to serve. However, this differential already exists to a large degree.

If the existing carriers eliminate some routes, a small group of people, whose size it is impossible to estimate, might be left without satisfactory service. It is therefore necessary to look at other options available for stimulating or providing service. Straight subsidies may be needed. It is questionable whether private firms should be required to subsidize the needs of a small group of people, particularly if this has the effect of requiring bus riders in large urban areas to subsidize riders in small towns. Such cross-subsidization may be the case under current regulation, if indeed service between major population centers supports service to small communities.

Alternatives for Service to Small Communities

The principal replacement for existing bus service to small communities may be private development of local service better adapted to rural needs. One of the most interesting features of airline deregulation has been the burgeoning of commuter airlines to serve smaller communities. The demand for airplanes with 20-40 seats has exceeded the capacity to manufacture them.[19]

A similar situation may significantly affect the debate about bus service to small communities. Currently, carriers serve small communities with the same coaches used for intercity service, and with schedules that tend to be dictated by connections in large cities. In the context of their total network, uniform coaches provide the carriers with an interchangeable fleet, economical maintenance, and controllable scheduling. It would appear, however, that in many cases a flexible service with minibuses may be more economical and better adapted to local transportation needs than the present coach service. Such local service would provide more community control over service levels and local employment for operation and maintenance of the fleet. In other areas, existing buses used by schools or churches could be used efficiently during their idle times to provide the minimum level of service required to access nearby regular route or minibus service.

If such solutions from the private sector fail to materialize, subsidy may be the most effective means of ensuring service. Subsidies could be paid either to the bus companies, to encourage them to provide service to small towns, or to the economically disadvantaged in small towns, to enable them to pay the incremental cost of a fully economic bus fare. Methods of handling subsidies in the transportation industry are discussed below.

METHODS USED TO PROTECT THE PUBLIC INTEREST

Subsidies

Public funds have been used extensively to subsidize common carrier operations in several different modes of transportation. The primary purpose of these funds for airlines has been to protect service to small communities. In the case of rail travel, however, funds have been provided primarily to protect the long-term viability of the industry.

Air

The Airline Deregulation Act requires the CAB to assure the continued provision of essential air transport services to small communities and authorizes it to use subsidies where necessary to achieve this result. The subsidy is based on the average costs (including return on investment) and revenues incurred by all regional carriers eligible for subsidies. Only about 1.15% of total domestic air service is provided on routes eligible for subsidies.[20] In 1979, regional carriers received $84 million in federal aid,[21] of which 90% was postal subsidies.[22]

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[15] National Association of Motor Bus Owners, *One Half Century of Service to America*, 1976, p. 5.

[16] *Intercity Bus Service in Small Communities*, 1978, pp. 19-26.

[17] Office of the Secretary of State of Arizona. Twelve of Arizona's 14 Counties are considered rural; the measure was approved by 63% of the voters in the rural counties.

[18] U.S. Department of Commerce, *Statistical Abstract of the United States*, Washington, D.C., 1979, p. 650.

[19] *The Wall Street Journal*, November 20, 1980, p. 1, col. 5.

Rail

The public funds for air carriers are quite small compared to the financial support that has been given for railroad passenger service since 1971. Railroads were once the primary mode of intercity travel but by 1970, the last full year of private intercity rail passenger service, only 290 daily departures took place on a route network of less than 50,000 route-miles. During that year, the railroads ran an estimated minimum deficit of $252 million.[23] Amtrak was created in 1971 to provide continued rail passenger service and to allow private rail carriers a means of easing their cost burdens. Amtrak was granted pricing freedom in an effort to improve revenues. Amtrak, however, is not expected to become financially independent of public subsidy in the foreseeable future, if ever.

As a result of federal and state subsidies covering its deficits, Amtrak has been able to offer its customers more fare and service options over a larger route network than would have been possible without subsidy. The effect of these funds has been to enlarge Amtrak's share of business where it competes with bus service. In addition to subsidizing Amtrak's operating expenses, large sums have been allocated to modernize equipment and improve roadbeds. In 1979, Amtrak received $779 million in subsidies, or $2.1 million per day,[24] while federal subsidies for Conrail totaled $729 million.[25] Even after this assistance, however, not one route in the Amtrak system is profitable.[26]

Buses

In contrast to the federal assistance for air and rail service, no federal maintenance subsidy is provided for intercity bus operations. In 1978, Congress authorized funds under an amendment to the Urban Mass Transportation Act of 1964 (sections 21, and 22); however, the funds were not appropriated.[27] While the bus industry has benefited from the modernization and expansion of highways, it has also until recently contributed to their improvement. The Federal Highway Administration in 1975 estimated that intercity bus carriers paid about 25% more in user taxes for highways than the costs attributed to them.[28] In 1978, in recognition of the fuel efficiency of the intercity bus industry, Congress reduced the excise tax on intercity bus carriers.[29]

State Programs

In an effort to maintain service, usually for a particular area or user group, several states have subsidized bus companies. Nine states (California, Iowa, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, and West Virginia) all offer some form of assistance to the intercity bus industry. The New York and New Jersey programs are focused on commuter operations in major metropolitan areas.[30] The Michigan program includes loans to acquire new or used equipment, start-up operating assistance to defray direct operating expenses during a route's trial period, and a program to provide funds for construction and renovation of intercity passenger terminals. Estimated total state-provided subsidies nationwide (operating, equipment, and terminals) were $10 million to $17 million in 1978, with an additional $55 million budgeted for bus commuter service in New York and New Jersey.[31]

The Free Market Approach

The Experience in Florida

Bus regulation ended in Florida on June 30, 1980, as a result of automatic repeal. It is still too early to tell what the long-term effects of deregulation will be, but preliminary results have been positive.

Service is generally believed to have improved. Between November 1979 and November 1980, weekly scheduled miles for the two major carriers increased 7.8%, and the number of scheduled weekly trips increased 2.7%.[32] In 1980, seven new routes were added by these two carriers and six were dropped.[33] Although 41 sole-service stops were eliminated by one major carrier (affecting approximately 1% of the Florida population with an average of 14.1 miles to the nearest stop),[34] the same carrier provided new service to eighteen new stops, with a net effect of a 1.7% increase in population served.[35]

Table IV-2
Greyhound Lines and Trailways, Inc.
Mileage and Schedule Statistics in Florida
1979-1980

	1979	1980	% Change
Total Weekly Miles	390,968	421,454	7.8
Number of Scheduled Weekly Trips	2,008	2,063	2.7

Source: Florida Route Changes by Greyhound and Trailways, 1979 and 1980 Statistics. Compiled by Management Analysis Center.

In addition, small companies are springing up to handle demand in small towns; new charter companies are forming, and charter fares are being reduced.[36]

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[20] Bill McCanant, Subsidy Division, Civil Aeronautics Board, Washington, D.C.

[21] Greyhound Lines, Inc., "The Most Fuel Efficient Way to Travel," GL1-229, 1980, p. 2.

[22] Bill McCanant, Subsidy Division, CAB, Washington, D.C.

[23] ICC Annual Report R-1 (National Railroad Passenger Corporation), 1971.

[24] Interstate and Foreign Commerce Committee Report, *Rail Act of 1980*, May 1980, p. 135.

[25] Jane Conger, Department of Transportation, Washington, D.C.

[26] Interstate and Foreign Commerce Committee Report, *Rail Act of 1980*, p. 100.

[27] *NTPSC Special Report No. 7*, 1979, pp. 90-91.

[28] Department of Transportation, *National Transportation Trends and Choices*, Washington, D.C. 1977, p. 166.

[29] *Senate Conference Report on the National Energy Act of 1978*, Washington, D.C., 1978.

[30] *NTPSC Special Report No. 7*, 1979, p. 59.

[31] *Ibid.*

[32] *Florida Route Changes by Greyhound and Trailways*, 1979 and 1980 statistics compiled by Management Analysis Center.

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*

[36] State Representative George Sheldon, "The Florida Deregulatory Experience," Conference on Intercity Bus Transportation, Washington, D.C., September 1980.

The Trucking Deregulation Experience

On June 20, 1980, Congress passed the *Motor Carrier Act of 1980* to amend the Motor Carrier Act of 1935. In a recent staff report on the developments in the motor carrier industry since deregulation, the following comments were noted:[17]

- The small carriers who were only "local" movers are most pleased with their new freedom.
- New companies . . . have come into being to provide general commodity service to small communities.
- The Texas Railroad Commission . . . witnessed a pattern of "long haul" carriers eliminating service to small communities but with other local or regional carriers moving in to replace them. The ICC staff interpreted this pattern as being a demonstration of the flexibility and competitiveness of the industry in general.

Conclusion

It appears, therefore, that both subsidies and deregulation have successfully assisted in providing service to small communities in different situations. These two methods meet the objectives of economic efficiency and availability of service directly, rather than the indirect control of regulating entry and exit. The record also shows that regulation is not a panacea for intercity bus service to small communities, as over the last ten years 1,850 stops have been eliminated in a regulated environment.

V. PUBLIC POLICY FOR THE FUTURE

KEY POLICY ISSUES

Allocation of Federal Resources among Modes

To apply federal resources most effectively for all modes of transportation and to best serve the public interest, more planning that considers all modes is needed. Currently, six of the eight operating organizations of the Department of Transportation are organized by mode. Inevitably, employees of each organization tend to think about better transportation in the context of that mode rather than transportation as a whole. Likewise, federal transportation grants are oriented toward a single mode. To the extent that federal resources are to be expended on transportation, the relative effectiveness of expenditures on each mode should be evaluated. Increased intermodal planning will focus more attention on the incremental benefit of a dollar spent on one mode versus another.

Levels of Service

Under any form of deregulation that includes free entry, most issues of service — both quantity and quality — will be resolved by the free market, where demand stimulates competition. High levels of service will be rewarded economically. Consequently, public policy with respect to levels of service need only concern itself with those areas or routes where demand may be inadequate to support more than one, or even one, carrier.

In these areas of slight demand, availability and reasonable fares are likely to be of more concern than frequency and other aspects of service. Specific rules or standards to control availability or fares may cause a number of problems. Free entry combined with stringent standards on fares and service may discourage small carriers from providing service. Denying exit would negatively affect the goals of efficient use of energy and resources, environmental protection, and long-term viability of the intercity bus industry. It may also discourage new entrants.

Subsidies, however, could provide for any unsatisfied needs of both the carriers and the public. Areas with little demand would obtain service, and small carriers would be attracted to provide this service because profit could be assured.

Economic Efficiency

Inevitably, the economic aspects of the question of deregulation will be affected by policies regarding flexibility of entry and exit. To the extent that public policy limits either entry or exit, it will affect reasonable fares, industry viability, or both. In a free market, the industry effectively becomes self-regulating with respect to both of these measures of the public interest. Appropriate antitrust and other laws governing unfair business practices can ensure that honest, competitive practice governs such self-regulation.

CONCLUSIONS AND RECOMMENDATIONS

A Look at Passenger Transportation as a Whole

Passenger transportation is provided by modes of travel that both compete with and complement each other. To the extent that the government subsidizes any mode of transportation, intermodal planning is necessary.

To promote intermodal planning, it is recommended that the Department of Transportation:

- seek Congressional legislation to consolidate modal planning grants into block grants for all transportation planning.
- combine existing modal planning staffs into a single unit and build staff capabilities to assist state and local transportation planning for all modes.
- develop unified regulations for all transportation planning.

Deregulation of the Bus Industry

The economist would argue that bus deregulation makes sense because this industry is not a natural monopoly. Under deregulation, the market will define its transportation needs and the industry will automatically seek equilibrium at that level of service, competition, innovation, efficiency, etc. The policymaker's dilemma is that this free market equilibrium will differ from the current equilibrium. To the extent that, under regulation, entry restrictions have prevented more efficient carriers from entering new markets, or exit restrictions have prevented carriers from leaving unprofitable markets, or rate restrictions have prevented carriers from making an adequate return, the market is distorted by subsidies. These may take the form of the travelling public subsidizing inefficient carriers, interstate passengers subsidizing intrastate passengers, urban passengers subsidizing rural passengers, or other departures from a free market equilibrium.

The policymaker must first decide whether such subsidies are in the public interest, and then determine whether deregulation can better meet public interest objectives. The extent to which it can, and the methods to be used, depend in large part on the structure of the industry. To see how the policymaker's needs can be met in the bus industry, one must examine both the supply and demand sides of the market.

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[17] "Highlights of Recent Activity in the Motor Carrier Industry," ICC Staff Report, Washington, D.C., December 1980.

In terms of supply, the current structure of the bus industry appears to be well suited for a free market approach to deregulation.

- Unlike the rail industry, few barriers to entry exist once the industry is deregulated. The capital cost of acquiring buses is relatively small. The bus industry is not characterized by expensive technological innovation. A potential barrier, however, is the amount of insurance coverage required.
- The diversity of the industry's business offers a number of avenues for entry: through the charter business, through a regional base, or between particular city-pairs. While two large carriers currently offer, in effect, nationwide service, the focus of competition is not nationwide. The average bus trip is 76 miles in length and even for Class I intercity carriers the average trip-length is only 123 miles. A number of smaller carriers have developed very profitable regional businesses, and a large number of service areas exist with differing route characteristics and varying degrees of intra- and intermodal competition.
- While the larger carriers may have economies of scale in promotion, no significant economies of scale appear to exist in operations, and the diseconomy of a unionized wage structure mitigates any marketing advantages the large carriers may have. Certainly, the operating results of the large carriers do not indicate any significant economies of scale either in terms of their profitability or of passenger growth compared to smaller regional carriers.

Where demand is adequate, there are few compelling reasons to enact public policy initiatives designed to help participants compete. In these cases, existing antitrust laws seem adequate to ensure competition in the public interest.

In terms of demand, the primary public policy concerns are unreasonable fares and/or a total elimination of service in areas of low demand. On these issues, the structure of the bus industry generally appears to favor a free market approach.

- Most demand (over 70%) for bus service is in urban areas where other forms of transportation are plentiful. Some portion of the remaining demand also has access to other forms of public transportation (i.e., rail or air transport is available even though the passengers do not reside in an SMSA). A large proportion of these potential bus passengers have private automobiles. Car ownership per household in rural areas is substantially higher than in urban areas.
- State subsidy plans already exist in nine states, and other states could and may wish to adopt similar plans, regardless of federal policy initiatives.
- The evidence on fares and cutbacks in service in deregulated industries does not support a picture of unjustified fare hikes or service cutbacks. Service has generally increased under air deregulation, and under bus deregulation in Florida.

Some isolated cases may nonetheless require public policy initiatives. In defining the nature and extent of possible responses, it will be critical to avoid applying public initiatives or regulations that upset the optimum market equilibrium for the majority of areas where low demand is not a factor. Conversely, no public initiatives may leave small segments of demand with the problem of lack of service. Given the possible occurrence of such problems, it seems reasonable to suggest that regulation (such as barriers to exit or control of rates) would be too heavy a load to apply until it is needed. Local subsidies, such as those currently provided in several states, may be the most appropriate way to deal with any problems that may develop regarding adequate service in low demand areas.

Policy Recommendations

This review of the bus industry structure suggests that deregulation of the industry is appropriate and desirable. By and large, existing market checks and balances are adequate to ensure competition in the interests of both the bus industry and its consumers. While differences about the exact details of deregulation will exist, the following recommendations, essentially supporting a free market, appear to be appropriate.

Entry

Free entry should be allowed in the intercity bus industry to encourage the maximum level of competition and to ensure efficient fares and service.

Proposals that tighten standards of public convenience and necessity would discourage competition and would frustrate the objective of increased competition.

The two-tiered approach, restricting the largest competitor(s) from new authority while giving free entry to others, has already been rejected by the ICC, as being "inconsistent with a policy based on competition."[1] In addition, the two-tiered policy does not take into consideration differing areas such as those in which different levels of demand exist for various types of service. Similar criticisms can be made of other "exceptions" proposals, such as those designed to protect bridge carriers.

Exit

The provision that would allow interstate carriers free exit from unprofitable routes through a notice procedure offers a combination of sound economic principles and protection for low demand areas. Passengers and communities would be given adequate notice of discontinued service, and carriers would be assured of adequate compensation for, or the ability to give up, unprofitable routes. The ability to give up unprofitable routes may actually encourage new service, if carriers do not fear being saddled with undesirable routes.

The concern that free exit will lead to wholesale abandonment of service to small communities appears unjustified. The experiences in Florida and the airline industry suggest that deregulation does not lead to significant problems of abandonment; instead results showed increased service overall.

To the extent that existing carriers do cut service, the appropriate response may be a two-step process that would allow the private sector to resolve the problem. Subsidies are not the only, or necessarily the correct, way to address decreased service. The tradeoff between the economic inefficiency of subsidies and any resulting social benefit is difficult to calculate. The market should be allowed to operate to resolve the problem. Congress could specify oversight hearings to assess the results achieved by deregulation and determine the extent to which supply has responded to demand, as it did in the *Motor Carrier Act of 1980*. Where a substantial need for service is apparent, the ICC could then contact state or local authorities to assess the impact. At that point, subsidy may become the most efficient solution.

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[1] The Motor Bus Act of 1981
Interstate Commerce Commission
Washington, D.C., December 15, 1981, p. 4

Rates

Upward and downward flexibility in fares appears to be appropriate for the bus industry. This flexibility would allow for competition and should encourage greater use of peak-load pricing and special promotional fares and quicker recouping of cost increases. No doubt experimentation will be necessary to determine the appropriate degree of flexibility.

To assure adequate price competition in the bus industry and in the interests of maximizing the free market approach, immunity from antitrust action for single-line rates should be eliminated. The discussion of single-line rates does not seem to serve any public purpose.

The joint-rate issue is more complex, involving a number of concerns about through routes. Antitrust immunity to set joint rates on through routes is recommended, but only to agree on joint rates with carriers participating in such service.

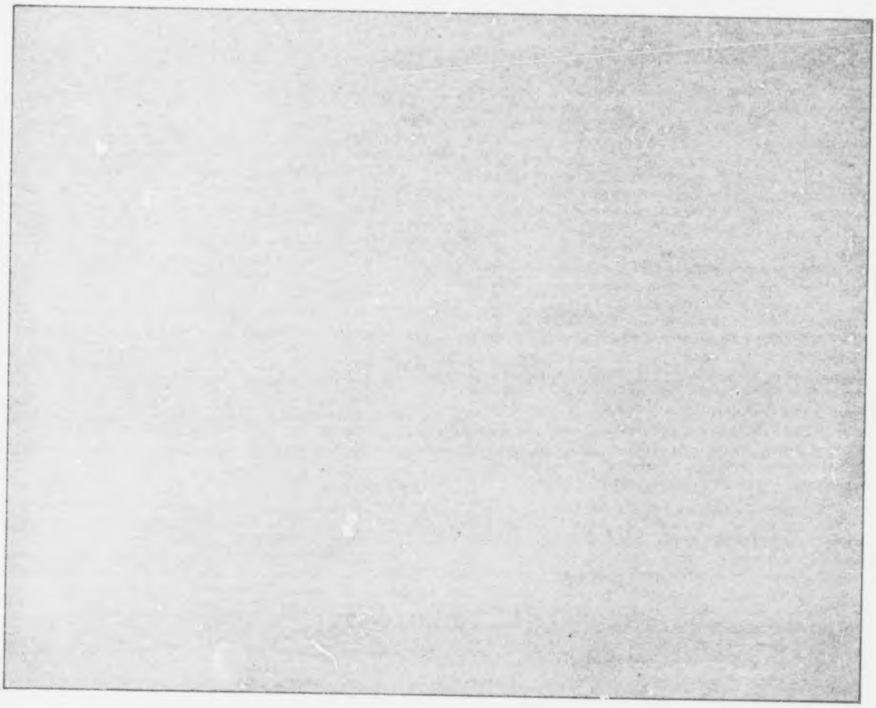
Preemption

All of these national policies could be nullified by conflicting state regulatory actions. Problems could arise in the areas of entry, exit, or rate-making, where state commissions could hold down intrastate fares, forcing carriers to subsidize intrastate traffic by increasing interstate fares. Legislation covering airline deregulation and rail recognized the need to preempt such state action.

To promote competition and to ensure the long-term health of the bus industry, legislation should be enacted to protect the right of carriers to price services fairly, use vehicles efficiently, and avoid cross-subsidies among intrastate and interstate passengers. The Congress should therefore preempt state authority over intrastate transportation to preclude state regulatory activities which would frustrate deregulation objectives.

Monitoring The Results of Deregulation

Deregulation in any form will be a major change for the intercity bus industry. It will be important to be able to evaluate the degree of success this measure has achieved. Measuring how well transportation objectives have been achieved can be both difficult and arbitrary. In connection with such a major step, it would be desirable to concur on objectives and measurements and to put in place the appropriate framework and methods for executing such measurements. Only then will an accurate picture of the true effects of deregulation be possible.



APPENDIX

Table A-1
Total Passenger Operating Revenues
1970-1979
($ Millions)

MODE	1970	1975	1976	1977	1978	1979
AIR (Domestic Certificated)	6,246.0	10,113.0	11,855.0	13,489.0	18,806.2	22,792.1
RAIL (Class I, Amtrak)*	420.5	536.1	591.9	609.0	607.9	707.6
LOCAL TRANSIT, Total	1,639.1	1,860.5	2,025.6	2,157.1	2,271.0	2,359.2[1]
Light Rail	46.6	28.1	25.7	23.9	26.6	27.7[1]
Heavy Rail	368.5	504.3	616.5	634.2	652.2	678.3[1]
Trolley Coach	30.4	15.4	15.0	14.5	14.4	15.0[1]
Bus	1,193.6	1,310.1	1,366.0	1,482.0	1,575.2	1,638.2[1]
Other	0.0	2.6	2.4	2.5	2.6	0.0
BUS, Total	783.8	1,017.1	1,055.9	1,125.2	1,191.6	1,409.0
Class I	604.1	800.2	821.0	804.8	838.8	987.9
Class II, III	179.7	216.9	234.9	320.4	352.8	421.1
TOTAL	9,089.4	13,526.7	15,528.4[1]	17,380.3	22,876.7	27,267.9

[1] Estimated

*Amtrak established May 1, 1971

Source: See Chapter II, Footnote 5.

Table A-2
Intercity Travel by Mode
1970-1979
(Billions of Passenger-Miles)

MODE	1970	1975	1976	1977	1978	1979	Annualized % Change 1970-1979
PRIVATE AUTO	1,026.0	1,123.2	1,215.4	1,248.2	1,316.9	1,287.9	2.5
AIR (Domestic Certificated)	109.5	136.9	152.3	164.2	189.1	213.5	7.7
RAIL (All Classes)	10.9	10.1	10.5	10.4	10.5	11.6	0.7
BUS (Class I, II, III)	25.3	25.4	25.1	25.7	25.4	26.6	0.6
TOTAL	1,171.7	1,295.6	1,403.3	1,448.5	1,541.9	1,539.6	3.1

Source: See Chapter II, Footnote 5

Table A-3
Intercity Passengers Carried
1970-1979
(Millions)

MODE	1970	1975	1976	1977	1978	1979	Annualized % Change 1970-1979
AIR (Domestic Certificated)	155.0	191.1	209.6	225.9	257.0	295.1	7.4
RAIL (Class I)	283.9	269.4	271.7	275.3	281.0	301.3	0.7
BUS (Class I, II, III)	401.0	351.0	340.0	332.0	335.0	350.0	(1.5)
TOTAL	839.9	811.5	821.3	833.2	873.0	946.4	1.3

Source: See Chapter II, Footnote 6

Table A-4
Personal Expenditures For Transportation
1970-1979
($ Billions)

	Transportation	Total	Transportation % of Total
1970	78.0	619.6	13%
1975	125.5	983.0	13%
1976	150.4	1,095.3	14%
1977	172.1	1,211.9	14%
1978	191.3	1,350.8	14%
1979	212.2	1,509.8	14%

Source: See Chapter II, Footnote 9

Table A-5
Personal Expenditures by Transportation Sector
1970-1979
($ Millions)

MODE	1970	1975	1976	1977	1978	1979	Annualized % Change 1970-1979
Purchased Local Transportation							
— Street Electric Railway and Local Bus	1,573	1,787	1,945	2,071	2,239	2,504	5.3%
— Railway (Commutation)	172	206	224	230	240	255	4.5%
Purchased Intercity Transportation							
— Airline	2,166	3,595	4,206	4,780	5,265	6,188	12.4%
— Railway*	185	254	281	292	281	338	6.9%
— Bus	496	605	608	640	651	783	5.2%
Other**	937	1,186	1,321	1,439	1,477	1,659	6.6%
TOTAL PURCHASED TRANSPORTATION	5,529	7,633	8,585	9,452	10,153	11,727	8.7%
User-Operated Automobiles	72,503	117,860	141,819	162,652	181,147	200,494	12.0%
TOTAL	78,032	125,493	150,404	172,104	191,300	212,221	11.8%

*Does not include public subsidy

**Comprised mostly of taxicabs

An obvious discrepancy exists between figures representing consumer expenditures and passenger revenues per transportation mode. Consumer expenditures do not include revenue generated from business or government travel

Source: See Chapter II, Footnote 9

Table A-6
Average Trip Length Per Transportation Mode

	1970	1975	1976	1977	1978	1979
AIR (Domestic Certificated	706	716	727	727	736	723
RAIL (Class I)	38	37	39	38	37	38
BUS, Class I, II, III (Intercity, Suburban, Local)	63	72	74	77	76	76
Class I (Intercity)	106	113	112	127	123	123

Source: See Chapter II, Footnote 11.

Table A-7
Regional Distribution of Round Trips* by Transportation Mode, 1977

REGION OF ORIGIN	Auto/Truck without Camping Equipment	Airplane	Bus	Train	Total Trips	% of Travellers Residing in SMSAs**
New England	4	6	5	5	4	78
Middle Atlantic	7	13	13	23	8	79
Lower Middle Atlantic	10	10	13	29	10	76
South	19	14	16	7	18	62
Great Lakes Country	24	21	19	18	24	71
Mountain West	5	4	6	5	5	49
Frontier West	15	1[illegible]	11	4	15	67
Far West and Hawaii	14	20	17	8	16	76
TOTAL	100	100	100	100	100	–

New England Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island

Middle Atlantic New York, New Jersey

Lower Middle Atlantic Pennsylvania, Delaware, Maryland, West Virginia, Virginia

South Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Arkansas, Louisiana, Florida

Great Lakes Country Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa

Mountain West North Dakota, South Dakota, Nebraska, Montana, Wyoming, Colorado, Utah

Frontier West Missouri, Kansas, Oklahoma, Texas, New Mexico, Arizona

Far West and Hawaii California, Nevada, Idaho, Oregon, Washington, Alaska, Hawaii

*Round trips over 200 miles

**SMSA is a Standard Metropolitan Statistical Area as defined by the Bureau of the Census

Source See Chapter II, Footnote 16

Table A-8
Modal Distribution of Round Trips* by Region, 1977

REGION OF ORIGIN	Auto/Truck without Camping Equipment	Airplane	Bus	Train	Other	Total**
New England	84	11	3	1	1	100
Middle Atlantic	79	13	5	3	0	100
Lower Middle Atlantic	83	10	4	2	0	100
South	86	11	3	0	0	100
Great Lakes Country	86	10	2	1	1	100
Mountain West	85	10	3	0	2	100
Frontier West	86	10	2	0	1	100
Far West and Hawaii	77	19	3	1	1	100

TOTAL U.S. ROUND TRIPS * 499.5 million

New England Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island

Middle Atlantic New York, New Jersey

Lower Middle Atlantic Pennsylvania, Delaware, Maryland, West Virginia, Virginia

South Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Arkansas, Louisiana, Florida

Great Lakes Country Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa

Mountain West North Dakota, South Dakota, Nebraska, Montana, Wyoming, Colorado, Utah

Frontier West Missouri, Kansas, Oklahoma, Texas, New Mexico, Arizona

Far West and Hawaii California, Nevada, Idaho, Oregon, Washington, Alaska, Hawaii

*Round trips over 200 miles, excluding auto/truck campers, and persons using different means of transport for return trip

**May not add to 100 because of rounding

Source See Chapter II, Footnote 16

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Mr. SUNIA. Please proceed.

TESTIMONY OF WILLIAM McCRACKEN, SENIOR VICE PRESIDENT, GREYHOUND LINES, INC.

Mr. McCRACKEN. Thank you, Mr. Chairman. I think I will let the prepared statement stand on its own.

I would like to take this opportunity to respond to a few of the comments that were made this morning.

I think it is necessary to put into perspective some of the things that have occurred in the last 11 months under the Bus Act. One would have thought sitting here this morning that there was only one section of the Bus Act and that had to do with discontinuance. That is obviously not true. There are about 25 sections dealing with a myriad of problems and providing a myriad of opportunities for the bus industry. And we think in most particulars the Bus Act is working. It is working in exactly the manner that the authors of the bill and the people who supported it anticipated it would work.

There really have not been any surprises, I do not think, to those who were familiar with the bill and what to anticipate.

Let us address discontinuance, obviously a matter of concern to many members.

And certainly there have been discontinuances. In my testimony, I provide certain specific numbers with respect to the number of locations or points in timetables that Greyhound has proposed to discontinue or has discontinued. I would not utilize the numbers of AASHTO as to points Greyhound might or might not have discontinued. We have looked at that data. We find it very misleading and erroneous.

We think the severity that would be conveyed to you with respect to discontinuance is all out of proportion to what actually happened. There are only a few States that have exhibited any concern about discontinuance in service, not more than a handful, and you have heard from them today.

We filed requests with 43 States to discontinue one point or two points or a route. I believe it was 29 or 30 of those States it was approved at the State level as being in the public interest. Illinois was one of those States. The Illinois Commission approved our request in its entirety and made a finding that there was no public interest to continue that service.

I would subscribe to a prior comment you heard that we are dealing with past history now. I think in almost every instance carriers had apprised their route structure, reviewed it in the year or two before deregulation. They knew what they wanted to accomplish to modernize their route structure, bring it into the 1980's, and they did it.

I know in Greyhound's case we filed every discontinuance that we envisioned, as being proper to file, after lengthy study. We have no second or third or fourth wave of discontinuances sitting out there ready to file. From now on whatever we do, whether it is additions or subtractions in service, will be purely a reaction to the marketplace.

The first time around was a reaction to regulation, adapting our route structures to a deregulated environment. As far as subsidies, or we would call them contracts for service, are concerned, in the 43 States where we sought approval to reduce our service, only one State in the 43 proposed any type of financial assistance, and that was the State of New York, which has had a program for many years of providing that type of assistance.

Other States never came forward, either at the State, local, county, or the regional level, to provide any type of financial assistance. I think that is indicative of the fact that even they recognized there was no public need or reason for that service.

The routes—when we discontinued routes, they were quite often situations where we were averaging less than one person a day on the route. That means that we might have taken in 5, 6, 7 cents each mile in revenue, and it cost us $2.30 to operate it.

I think you can see why we have tried to discontinue service.

California made a great case for the fact that they claimed that Greyhound "stonewalled" the process. I would submit to you that the State of California Public Utilities Commission "stonewalled" Greyhound. We filed to discontinue a de minimis amount of service.

Last year we did $100 million plus in business in the State of California. We filed an application to discontinue service which embraced $38,000 in revenue. Four-hundredths of 1 percent of our revenue would have been affected by the discontinuances. The Public Utilities Commission never set the matter for hearing. They never considered the evidence several inches thick, more than I have ever seen us submit before. They never considered it.

They dismissed the application. We never had an opportunity to have it decided on the merits. We think that was wrong. We petitioned for rehearing. They refused to consider the petition for rehearing. They said you cannot petition for rehearing from a dismissal.

So we went to the ICC. They are supposed to decide these matters in 120 days. I think it has been 5 or 6 months now and we have not had a decision from the ICC. Mr. Weisser suggested that they desire a meaningful process. We do too, but we did not get any process. In my opinion, the word "stonewall" is correct. But it was the applicant, Greyhound, that was "stonewalled."

The State of Texas: There was some reference to Greyhound this morning. Let me tell you, in the State of Texas, we proposed to discontinue one route, a back road from San Antonio to Houston. For merely filing that application we were told that the State was considering revoking our Statewide charter and package express rights on all the other routes we operate because we had the temerity to file this application.

Bear in mind the State of Texas very aggressively opposed this bill from the beginning.

Replacement service: There is a carrier that wants to replace us on that route. They have been frustrated by the Texas Railroad Commission and misled by an ICC local official as to what to do to get on that route.

Illinois: In our testimony we oppose the Simon-Percy amendment. We would suggest if you read that amendment, it does much much more than add a few days to the process and provide prior notice. It shifts the balance or the weight to be given evidence in a way that would make exit virtually impossible for the last carrier on a route. It would deprive the ICC of its decision making power over new applications and give a veto power to the States.

West Virginia: There have been some comments about West Virginia. We filed a discontinuance application there. It was denied in part. We went to the ICC, and the ICC said there is no explanation why it was denied. And anyway it is in the public interest, so they allowed us out of the route.

I do not want to be all negative. The State of Michigan appeared here today. The State of Michigan has its own deregulation law which goes far, far more—there is far, far more deregulation in that State law than is in the bus act.

In part that was a result of the work of Mr. Rudnick who testified. Michigan has exhibited great enlightenment, we think.

Last, I would like to address the comments that somehow Greyhound is distorting the whole process of entry under the Bus Act. There is no reference to the fact that the Greyhound applications for additional routes from the ICC are miniscule in scope, an expansion of maybe 1 or 2 percent in our route structure.

There was no mention of the fact that those applications had been protested and 10 months later we still do not have a decision on whether we can have those new routes. Everyone else that has applied has gotten new routes, but these were protested by Trailways. The administrative process has dragged along. We do not have a decision today.

We do not think that the act was designed—in fact, this Congress specifically rejected the idea of one entry test for Greyhound and one for everyone else. I heard that proposed a few moments ago by Mr. Sherlock, but this Congress has rejected it, as has the ICC.

But we would suggest if you are looking at ways to amend the law, there is a time limit in which the ICC must act on an exit application. There is a time limit in which they must act on a rate appeal from the States. We would suggest that a time limit, a hard, fast, binding time limit of maybe 90 days in which they must act on entry applications would be appropriate.

I would subscribe to the view that the ICC has become a paper processing laboratory and nothing else. We think in fact that is the greatest reason to do away with the ICC, Federal and State regulation of the bus industry.

That would be all I have. I would be happy to answer any questions you might have.

Mr. SUNIA. Thank you, Mr. McCracken. I have a couple of questions. To the best of your knowledge, has any substitute service been provided to those communities where Greyhound has abandoned service?

Mr. MCCRACKEN. I cannot quantify it, but it would be relatively insignificant, and I would like to explain why. As I indicated to you, routes that we have sought to abandon may be averaging one person a day. Even a carrier with costs one-half of ours could not survive on that traffic. Many of the points that we have proposed to discontinue are in this type of situation.

We have been stopping on an interstate highway at every interchange in North Dakota. There might be an interchange every 5 miles. What we did was we have discontinued every other interchange so that the people, instead of maybe having service 3 miles from their home, they now have it 6 or 7.

I think that over time, as carriers, smaller carriers recognize that the door is open, that it is easier to get into the business—you have to sweep away the cobwebs of 45 years of history where small entrepreneurs knew that if they wanted to go in the bus business they had better have a couple of hundred thousand dollars for lawyers and experts and 2 or 3 years to process it through the ICC.

I think when carriers come to recognize that is not there, you will see carriers coming in. I have seen a number of smaller carriers replace other small carriers on routes that were viable and could be supported. One classic example is in the States of Iowa and Minnesota. Midwest Coaches went out of business. Jackrabbit Coaches and Jefferson Lines replaced them on almost every route. I think there have been a number of situations where Trailways, Inc., recently has abandoned service and an independent Trailways company has replaced them.

Replacement service will come in if it is viable for a potential entrant. But if there are one or two people a day riding the service, it is never going to be viable without financial assistance.

Mr. SUNIA. Under the prior notice provision of Congressman Simon's bill, would Greyhound or any carrier find itself unable to exit from any route it is presently able to exit from?

Mr. MCCRACKEN. In the present law Congress wrote, that the Commission shall give great weight to the unprofitability of a route. The prior notice amendment would change that and say the great weight should be given to whether it is the last bus on the route.

To me, that is restoring regulation we had for 40 or 50 years in the States where State commissioners can just say, you are the last bus, so you are going to have to stay. It concerns me greatly.

I want to be frank with you, I am not concerned about the motives of the Illinois commissioner or the people that work in the State of Illinois. That same language is in a deregulation bill that is sitting on the Governor's desk in Springfield today. And we did not oppose it because they have treated us fairly in Illinois.

I am very concerned—and the record will show in the hearings here previously—that there are many States that do not treat carriers fair and reasonably, and I think they would use the prior notice amendment to go back to the old style of regulation.

Mr. SUNIA. Thank you. Congresswoman Martin?

Mrs. MARTIN. Well, it is nice, Mr. McCracken, to hear you talk about the superiority of the State of Illinois, something I have always believed. It is nice to have that on the record. I am not sure how the rest of the Congress is going to react to that, but it is nice to have an objective view about the fairest State in the Union. I am glad to have Greyhound's testimony on that.

But from that we may not just infer, since you are stating that 49 other States, even though Illinois is having the same law, 49 other States are incapable of acting fairly, and therefore we must not make this Federal law, Representative Simon's bill?

Mr. MCCRACKEN. No. I would not go that far.

Mrs. MARTIN. Which the Illinois delegation supports.

Mr. McCRACKEN. I think before you came in I mentioned when we filed discontinuance applications, we found approximately 30 of the States just immediately said, you are correct; there is no justification any more for this service. I think you would have to say those 30 states would implement such an amendment fairly.

But there is a history—I am not going to name them, but there is a history of about 8 or 10 States that every bus company has had just a terrible time with over the years.

Mrs. MARTIN. Well, that is 31 out of 50 are going to do fine, right?

Mr. McCRACKEN. I would say about 40.

Mrs. MARTIN. Fourty out of fifty are going to do fine. Because 10 States are patently unfair, in your view, we should not pass a law, but you do not think you should name them publicly.

Mr. McCRACKEN. I will name them. California——

Mrs. MARTIN. Why do you not name them and then we will tell them how unfair they are.

Mr. McCRACKEN. I named one earlier, California. And, you know, you can say 10 States, but they might account for 70 percent of the bus revenue in this country. The States are California, Texas, and Georgia. That is over a third, probably, of our nationwide revenue.

We do not anticipate a fair hearing. We filed a rate increase in Georgia, and we were told, since you filed an exit case, we are going to deny the rate case.

Mrs. MARTIN. Well, I am glad Illinois is fair. I regret that those three States are controlled by Democratic legislatures, I cannot comment. But I thank you for your testimony.

Mr. SUNIA. Mr. McCracken, thank you very much. Unless you have something else to add, thank you. I appreciate your testimony.

Mr. McCRACKEN. I assume, Mr. Chairman, that the record will be held open for any additional comments.

Mr. SUNIA. Yes.

[Subsequently, the following was received for the record from the Public Utilities Commission, State of California:]

STATE OF CALIFORNIA,
PUBLIC UTILITIES COMMISSION,
San Francisco, Calif., November 18, 1983.

Re Bus Regulatory Reform Act oversight hearings.

Hon. GLENN M. ANDERSON,
Chairman, House Subcommittee on Surface Transportation,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN ANDERSON: Enclosed are the original and seventy-five (75) copies of the Supplemental Statement of Victor R. Weisser, Director of the Transportation Division of the Public Utilities Commission of the State of California.

We respectfully request that Mr. Weisser's Supplemental Statement be incorporated into the record in the above-mentioned proceeding and placed after the oral and written testimony of William L. McCracken, Senior Vice President of Greyhound Lines, Inc.

Since Mr. McCracken testified after Mr. Weisser had testified in these proceedings and Mr. McCracken did not make available to the public has written statement until after Mr. Weisser had testified, this is our only opportunity to respond to his unfair accusations about the Public Utilities Commission of the State of California.

Sincerely,

HARVEY Y. MORRIS,
Senior Counsel.

SUPPLEMENTAL STATEMENT OF VICTOR R. WEISSER, DIRECTOR OF THE TRANSPORTATION DIVISION OF THE PUBLIC UTILITIES COMMISSION, OF THE STATE OF CALIFORNIA

In response to the written and oral testimony of William L. McCracken, Senior Vice President of Greyhound Lines, Inc. (Greyhound), I would like to set the record straight as to why the Public Utilities Commission of the State of California (CPUC) has not granted Greyhound authority to discontinue service to ninety-eight (98) communities in California. While Greyhound is quick to accuse a few states, such as ours, of refusing to recognize the Bus Regulatory Reform Act of 1982, Geryhound has not disclosed its attempts to subvert the safeguards built into the Act which are designed to give affected communities the opportunity to preserve bus service.

Greyhound's written statement mischaracterizes newspaper articles from which Greyhound relies upon selectively chosen segments of quotes to erroneously conclude that the CPUC had already determined its case before all of the facts were presented. Not only did Greyhound fail to give the full context of the quotes, Greyhound has misrepresented the action taken by the CPUC in Greyhound's case by stating that the CPUC dismissed its application without addressing the merits. What Greyhound has not stated is that the CPUC had dismissed Greyhound's application without prejudice to Greyhound's right to refile a new application which gave proper notice to the affected communities. Even this dismissal did not occur until after the CPUC had given Greyhound two opportunities to furnish the affected communities with proper notice and data so they could participate in the CPUC proceedings, but Greyhound had refused to do so.

While Greyhound portrays itself as being deprived by the CPUC of a hearing on the merits, in reality, Greyhound had seized upon what it perceived as an opportunity to avoid a hearing by not refiling an application with the CPUC, and instead filing a petition for discontinuance with the Interstate Commerce Commission (ICC) which does not conduct hearings on such matters.

The CPUC has granted Greyhound discontinuance authority in two other cases where Greyhound had given proper notice to affected communities and established that it had been losing money. Similarly, in another proceeding involving Greyhound, the CPUC found that the Bus Regulatory Reform Act of 1982 had preempted the CPUC's jurisdiction over pickup and delivery express package service in commercial zones. Greyhound's claim that the CPUC has not recognized the policies of the Bus Regulatory Reform Act is patently false, and is really a coverup for Greyhound's failure in one proceeding to give proper notice and dates to affected communities.

The CPUC has not yet determined whether or not Greyhound's request to discontinue service to ninety-eight communities is justifiable. The CPUC believes, however, that Congress intended that the affected communities have a meaningful opportunity to participate in the discontinance proceedings, where some may establish that Greyhound's service is not unprofitable, or if it is unprofitable, then offer subsidies. Until these communities have such an opportunity, the CPUC does not believe that any governmental body can authorize Greyhound's discontinuance of service.

Mr. SUNIA. We will now have Mr. Faillace, president of United Bus Owners Survival Association. Please proceed.

TESTIMONY OF RONALD R. FAILLACE, PRESIDENT, UNITED BUS OWNERS SURVIVAL ASSOCIATION (NEW JERSEY), ACCOMPANIED BY JOHN DONNELLY, FROHLING & HANLEY, LEGAL COUNSEL

Mr. FAILLACE. Thank you, Mr. Chairman.

United Bus Owners Survival Association represents a number of private operators within the States of New Jersey, Pennsylvania, New York, and Connecticut.

Mr. Chairman and members of this committee, I have the privilege to be here on behalf of a vanishing American, one who helped create a way of life that is unique in the world. I speak of the independent bus operators of New Jersey.

The word "independent" may be a misnomer. We are among the most thoroughly regulated, monitored, inspected, policed, and scrutinized segments of society in America. The books of regulations that govern us and the multitude of committees of regulatory status at every level of government outweigh the defense budget and the defense establishment.

But we are independent in that we are independent of massive subsidies, independent of government support and independent of government financing. We are free to compete as best we can in the marketplace.

The only bus entity that we in New Jersey know to be free of this regulation is a mighty organization subsidized by the State of New Jersey, free of virtually every regulation which controls every other bus company, an organization which has shown itself willing and able to destroy what is left of the private sector, New Jersey Transit.

This is no idle claim made by some self-serving private bus operator out to deprive the citizens of New Jersey of a beneficial mass transit operation. This is the statement of an independent bus operator who would like New Jersey Transit to stick to the job it was supposed to do when the citizens permitted its organization to provide mass transit for the commuter.

New Jersey Transit has an ongoing slogan, that is simply "We need this line to make money." So they successfully swallow up one transit line after another, adding them to the list of companies absorbed by New Jersey Transit and casting aside a few more commuters left orphaned by the disappearance of a favorite bus line.

Now, not content with wiping out virtually every major independent transit company in New Jersey, they want to go after charter business, the one last outpost of the independent bus operator.

We with investments of hundreds of millions of dollars, employees in the tens of thousands, with suppliers in the hundreds depending on our business, we are left to the mercy of New Jersey Transit for our survival.

What New Jersey Transit is and does we will document with ample evidence. We will show statistically the damage that has been done and will be done to the independent charter and line business in New Jersey when New Jersey Transit commences charter operations.

What New Jersey Transit is going to do depends on you, the Congress of the United States. You can allow New Jersey Transit to enter the area of interstate commerce where private unsubsidized carriers are ready, willing and able to provide service, an area in which it is not needed, an area in which it has no right to function, and by so doing, you can open the door to similar entities of 50 States to enter interstate commerce.

Or you can tell New Jersey Transit to do the job it is supposed to do, to provide necessary, economic, safe transportation to the commuter in the State of New Jersey.

We shall provide a report to this committee outlining the impact of any State subsidy entity on the charter and line business, the impact on interstate commerce and the impact on the private business companies.

The report will show that New Jersey Transit, No. 1, is using Federal subsidies to unfairly compete with the private sector. No. 2, New Jersey Transit is illegally and unnecessarily using UMTA buses for charters, thus reducing the useful life of equipment provided for the purpose of mass transit, ultimately requiring additional requests for Federal assistance, also depriving private carriers the additional revenue necessary to support line operations.

No. 3, New Jersey Transit is issuing statements of profitability in regard to so-called lucrative charter and line operations that are simply not factual. New Jersey Transit continues to operate at amounting massive operating losses due to fiscal irresponsibility.

No. 4, New Jersey Transit is using Federal subsidies to promote New Jersey Transit's Federal antitrust activities in competing anticompetitively with the private carriers.

No. 5, New Jersey Transit is competing unfavorably on regular route service where private operators are ready, willing and able to provide adequate service. New Jersey Transit uses Federal subsidy money to compete against these carriers thus discouraging private operators from instituting bus service for fear of proprietary practices of New Jersey Transit.

No. 6, New Jersey Transit is controlled by the very same commissioner who dictates policy with the New Jersey Department of Transportation, who in turn regulates very strictly the approvals of all regular route authority within New Jersey while there is a lack of regulation over New Jersey Transit's scope of operation thus creating a tightly State-controlled transit system seemingly to promote New Jersey Transit.

Mr. Chairman and members, allow me to apologize if I may for taking up this amount of time but to me and to the members of my organization, the United Bus Owners Survival Association, the issue is a matter of our very economic survival.

I thank you and I would be very pleased to answer any questions you may have.

[The following was received for the record from Mr. Faillace:]

SUPPLEMENT TO THE TESTIMONY OF RONALD R. FAILLACE, PRESIDENT, UNITED BUS OWNERS SURVIVAL ASSOCIATION (NEW JERSEY)

We present in this report various statistical information and legal conclusions with respect to New Jersey Transit's anti-competitive stature in the bus industry.

DAMAGE TO THE PRIVATE SECTOR RESULTING FROM NEW JERSEY TRANSIT'S OPERATIONS

Effect on private operators

Each day in New Jersey, there are over 200,000 commuters who ride buses to and from work. Prior to 1979, when New Jersey Transit commenced operations, these commuters received bus service solely from the private sector, the independent bus owners in the State. Since 1979, NJT has taken over fully 60 percent of the service previously handled by the private bus operators. The remaining 40 percent of the service is all that remains for 300 private bus company owners in the State. NJT's official position is that their individual 60 percent market share is not a destructive monopoly. However, fully 40 percent of the approximately 450 private bus companies in existence prior to NJT's entrance into the market in 1979 have gone out of business. The 40 percent include companies such as Manhattan Transit and Lincoln

Transit which NJT took over upon their bankruptcies, which NJT credited to the "competitive pressures" of the industry. NJT completely skirts the issue of their below rate ticket fares made possible by heavy taxpayers' subsidies as causing the bankruptcies.

NJT is currently bringing these "competitive pressures" to bear in the charter field, where they currently hold 437 authorizations for charters to points throughout the country which they inherited from the bankrupt companies they took over.

These NJT charter routes are being serviced with the use of 700 UMTA buses, contrary to the UMTA enabling legislation which specifies that their buses are to be used solely for commuter mass transit.

At the meeting of UBOSA with Deputy Acting Administrator Kent Woodman of UMTA in Washington, D.C., on September 28, Mr. Woodman's aides acknowledged sightings of UMT buses throughout the country, as did aides to various Congressmen who also attended the meeting. All parties agreed to coordinate an audit of destinations to which NJT's UMTA buses have been sent. It is possible that only negligible numbers of UMTA buses have been used on charters, but all other NJT buses on charters would require UMTA buses to take their place on intrastate regular route service. This results in additional unnecessary wear and tear on UMTA buses, so either way NJT's charter operations have a deleterious effect on the Federal grants for mass transit.

In particular, NJT's cost per mile for each bus is $1.50. Multiplying this by the average 60,000 miles traveled by each bus each year, $90,000 of Federal money is wasted for each bus on NJT's which is used for charters. The 437 charters they have rights to multiplied by the $90,000 would result in arguably in excess of a $36,000,000 detriment to commuter mass transit funds received through Federal grants. This figure only roughly represents the wear and tear on UMTA buses because it relies on fiscally responsible overhead expenses taken from the corresponding private industry expenses. So in fact, the expenses are probably much higher, since NJT is not as fiscally responsible as private companies, as they do not have to be due to heavy subsidization.

Despite subsidies totalling $1.2 billion for the last ten years, New Jersey Transit continues to have substantial deficits. For the last two years, for example, the deficits were $24 million and $31 million, respectively.

Effect on vendors of the private operators

An average bus company owner relies on over 100 vendors to supply him tires, gas, company stationery and the like essential to the business. Bus industry sentiment is that there are fewer vendors today than there were just 4 years ago in 1979, when NJT was formed, from whom to competitively buy supplies. With NJT relying on particular suppliers of their own, instead of the multiple number of suppliers which the companies taken over by NJT would use, it is believed that a corresponding 40 percent of the suppliers went out of business as 40 percent of the private bus operators have since 1979.

The increasingly anti-competitive stature of the vendors' industry is as detrimental to the health of the region's economy as any anti-competitive condition in any industry is detrimental.

VIOLATIONS OF THE FEDERAL POWER OF PRE-EMPTION OF INTERSTATE COMMERCE

What Congress had in mind when it authorized the Urban Mass Transit Administration to grant motor buses and other assets to local transportation agencies was that the subject of these grants would be used solely for aiding commuters in getting to and from work. No other use or diversion of the proceeds of the grants was either contemplated or envisioned; it was, in fact, forbidden.

An action of the New Jersey Department of Transportation, the regulatory body in New Jersey over the motor bus industry, by which it allows, through its regulations, the use of UMTA buses in a way forbidden by Congress, is an invalid action under the Constitution of the United States, in pertinent part at article I, section 8, know as the commerce clause: "The Congress shall have the power to regulate commerce . . . among the several States. . . "

The commerce clause has been conclusively interpreted by the United States Supreme Court as saying a state regulation contrary to an act of Congress is invalid. *Cooley* v. *Board of Wardens of Port of Philadelphia,* 53 U.S. 299 (1851). Currently, the New Jersey Department of Transportation has regulations allowing New Jersey Transit, the State-owned agency for mass transit, to run charter service through several points in the United States outside of New Jersey. As previously noted, UMTA is coordinating with the independent bus owners organization, UBOSA, to verify that the 450 UMTA buses have been used illegally in interstate commerce through charter operations permitted by State regulations. The outcome of this UMTA-UBOSA audit will, in the very least, show that the 245 buses purchased separately by NJT without UMTA grants are being used in interstate commerce. The net result being that UMTA buses are used more rigorously on operations intrastate, thus contributing to a shortened lifetime resulting in wasteful and illegal diminution of federal monies to aid solely commuter service as recognized earlier in this report.

Because of these facts, the State regulations are invalid as they are forbidden by acts of Congress which specify that Federal grants in the transportation area should be used solely to benefit the commuter service.

It is essential, therefore, for the Congress to reiterate, either in its policy statement or in revisory legislation to the Bus Regulatory Reform Act, the NJT cease charter operations, which waste Federal grants designed solely to aid regular route mass transit for the hundreds of thousands of daily commuters in the State. This Congressional action will have nationwide effects if also applied to similar heavily subsidized, State-owned transportation agencies, to the benefit of millions of mass-transit commuters who desire to see their tax dollars spent wisely.

Mr. SUNIA. Mr. Faillace, we appreciate very much your statement before the committee today. Does Mr. Donnelly have an additional statement?

Mr. DONNELLY. No, thank you, Mr. Chairman, but we do have two specific recommendations which Mr. Faillace would like to enunciate.

Mr. FAILLACE. In terms of recommendations, we would like to see the private operators involved in a more meaningful way on any transportation advisory committees and allowed to participate in providing of bus service as a first alternative as opposed to allowing a subsidized carrier to operate this type of service.

By allowing a private operator, we feel it would also cause a decrease in the Federal aid where it is not necessary.

We would also like to see allowing for private operators testimony prior to issuing of any additional or existing subsidies or authority so that it can ascertained that, in fact, that subsidy or that authority is necessary.

I appreciate it. Thank you.

Mr. SUNIA. Thank you.

Congresswoman Martin.

Mrs. MARTIN. Mr. Faillace and Mr. Donnelly, thank you for coming, and by the way, the policy judgments you are suggesting are some that should be considered by the committee. They obviously come from your own experience and would seem to deserve looking into as part of the policy statement from this committee.

Thank you.

Mr. FAILLACE. Thank you very much.

Mr. SUNIA. The chairman of our full committee, Chairman Howard, has expressed an interest on this subject, and he has made a statement which has become part of the Congressional Record on this very issue.

If you will leave your address with staff, we will make sure you receive a copy of the statement.

Mr. FAILLACE. I do appreciate that. Thank you, Mr. Chairman and members.

Mr. SUNIA. Thank you again.

That concludes the part of the hearing on the part of the buses.

We will now move to the movers. The panel will be of the American Movers Conference, Mr. Russell and Mr. Irions and whomever you brought with you we would be happy to have come up.

We have your testimony, gentlemen, and I thank you for coming to meet with us this afternoon.

The full text of your prepared statment will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF RICHARD L. RUSSELL, PRESIDENT, AERO MAYFLOWER TRANSIT CO., INC., INDIANAPOLIS, IND., AND CHARLES C. IRIONS, PRESIDENT, AMERICAN MOVERS CONFERENCE, ARLINGTON, VA.

INTRODUCTION

Mr. Chairman and members of the Subcommittee: My name is Richard L. Russell. I am president of Aero Mayflower Transit Company, Inc., Indianapolis, Indiana and chairman of American Movers Conference Board of Directors. Accompanying me today is Charles Irions, President of the American Movers Conference.

The American Movers Conference (AMC or Conference) is a national trade association of the household goods moving industry, representing carriers and agents of all sizes on whose behalf it customarily appears in proceedings before the Interstate Commerce Commission, the courts, and other federal agencies. Its members transport over 90 percent of the household goods moved in interstate commerce. It is a non-stock, non-profit, corporation organized and existing under the laws of the District of Columbia with offices at 400 Army-Navy Drive, Arlington, Virginia 22202.

The Conference appreciates this opportunity to appear before the Subcommittee for its oversight hearing on the impact of Public Law 96-454, the Household Goods Transportation Act of 1980.

OVERVIEW

The Conference continues to support the tenets of the Household Goods Transportation Act (HGTA or Act) and the Motor Carrier Act (MCA) of 1980. We know that when Congress enacted these regulatory reform bills, the views of many diverse interests were considered, and that, as a result, the provisions that becomes law represented a well-balanced compromise that accommodated the interests of the industry while continuing to protect the public. However, we believe that the acts would work better both for the industry and the public if the Interstate Commerce Commisson (ICC or Commission) and the Department of Defense (DOD) would administer and implement the acts as intended by Congress.

In prior oversight testimony before the Subcommittee in October, 1981, and again in December 1982, we expressed our concern over the manner in which the Act was being administered and the perceived failure of the Interstate Commerce Commission and the Department of Defense to fulfill their obligations under the Act. In the three years since the Act has been in effect and two years following the first oversight hearing, the situation continues unchanged, and has in some areas worsened. We would respectfully submit our members concerns: Is Congress listening? Are oversight hearings meaningful? Is there really any concern on the part of Congress as to the effects of legislative and regulatory changes on our industry a long as we move toward total deregulation?

Contrary to some proposals that have been made to end ICC regulation, we do not believe the Commission should be sunsetted. There is an essential place for the ICC in any scheme of minimal and responsible regulation for motor carriers. A primary concern expressed to the Committee in this testimony, however, is that since implementation of the 1980 Acts, the Commission has not administered their statutory responsibilities in accordance with the will of Congress as expressed in the legislation, and if allowed to continued unchecked, may cause irreputable damage both to the industry and the general public.

A great deal has been required of motor carriers in the past several years. Not only has this industry had to deal with raging price competition while struggling through a crippling recession, but we have been required to cope as well with new and sometimes troubling regulatory changes brought about by the HGTA and MCA. At the same time, new federal and state taxes are threatening to cripple the financial stability of a vital segment of our Nation's transportation system.

Our purpose here today is to bring to the Committee's attention some of these problems facing the industry and in particular, to offer constructive criticism of how the ICC and DOD are carrying out their obligations mandated by Congress. We urge this Committee to provide firm guidance to these federal agencies in securing their aherence to the spirit as well as the letter of the law.

THE HOUSEHOLD GOODS TRANSPORTATION ACT WILL WORK TO THE BENEFIT OF INDUSTRY AND PUBLIC IF PROPERLY ADMINISTERED

We believe that the Household Goods Transportation Act has benefitted the public and industry where it has been properly administered and implemented. For example, one section of the Act that is working well is the dispute settlement program. Section 7 of the Act allowed carriers to establish programs to settle disputes between the carriers and shippers. The industry set up such a program, approved by the Commission, wherein disputes between the carriers and shippers in regards to loss and damage claims could be submitted to arbitration procedures administered by the American Arbitration Association. This program is currently working well and has been effectvie both for the shippers and carriers in settling disputes without increasing the workload on an already overburdened judicial system.

Another example of how the HGTA is working is evidenced by the significant improvement in service performance and consumer satisfaction as reflected in ICC data collected since 1980. Although a slow economy and the resulting overcapacity have likely been a contributing factor, we believe that increased service competition, made possible by the operational flexibility afforded carriers under the HGTA, has definitely resulted in better service to our consumers.

Maintaining that enhanced service competition within the efficiencies of the van-line/carrier/agent system is possible because Congress in its wisdom laid a solid foundation in Section 5 of the HGTA when it exempted application of the antitrust laws to certain discussions or agreements between a carrier and its agents. This provision enhances competition while maintaining the stability of the van line system to provide backhaul shipments. Congress also acted thoughtfully and responsibly in another area of antitrust concern by providing further insurance that the small business mover would be able to remain competitive with the larger carriers in a deregulated environment by establishing a statutory presumption in favor of pooling agreements.

Some proposals for further deregulation of the motor carrier industry would repeal these stabilizing provisions enacted by the HGTA. However, without the antitrust immunity protection provided by the current law, agents would be forced into exclusive franchise agreements with van lines in order to maintain an integrated, coordinated moving system. Likewise, without the ability to pool, smaller carriers would be restricted to a limited geographical area because of the threat of antitrust litigation.

While we take strong exception to some of the Commission's actions and inactions in administering the Act, we still believe that with appropriate direction from Congress, the ICC could be a force for good in implementing its statutory mandates. Further, in the event of future changes to the federal regulatory structure for the motor carrier industry, the AMC is adamantly opposed to the transfer of any regulatory authority over household goods carriers from the ICC to the FTC. Any such jurisdiction should remain at the ICC or other independent federal agency experienced in transportation matters.

FEDERAL AND STATE TAX BURDENS PLAGUE THE INDUSTRY: THE NEED FOR EQUITY AND UNIFORMITY IN STATE TAXATION AND REGULATION

In addition to the challenges of drastic regulatory changes, this industry has also faced another rigorous test of its survivability in the area of sharply increased taxes. This Committee is well aware of the outrage experienced at all levels of the motor carrier industry and by many in Congress in response to the exorbitant new federal use taxes enacted by the Surface Transportation Assistance Act of 1982, which are due to go into effect next year. Obtaining a more reasonable and equitable pay-as-you-go alternative to the federal highway use taxes will be one of the highest priorities for the motor carrier industry in the coming year.

Federal taxes, however, are not the only significant tax issue facing the motor carrier industry today. Truck taxes imposed at the state level have virtually exploded on this industry in the past three years. Registration fees have increased in 22 states, fuel taxes have increased in 42 states and brand new special truck taxes have been enacted in 11 states. To make matters worse, we have five new retaliatory tax laws enacted in the states and five other states have expanded retaliatory tax impositions under preexisting retaliatory tax laws.

But for household goods carriers who must operate nationwide, the cumulative burden of state taxes is mind-boggling. Consider the following illustration:

To operate a typical tractor and van in the 48 states for a year, a household goods carrier must complete 290 fuel tax, third-structure tax and miscellaneous mileage based reports. These involve 32 different formulas and 40 different forms.

If the tractor is driven 60-thousand miles during the year, the company must process approximately 300 log, mileage and fuel records and 285 fuel receipts.

The fuel accounting requires a detailed audit, as there are 34 different sets of requirements in the 38 states with fuel tax reporting laws. That's for one truck.

Clearly, Mr. Chairman, this is a tax and regulation situation that is out of control. While specific legislation to resolve these problems may not come before you, we are asking this Committee to work with other congressional committees to bring some equity and uniformity in the state tax areas.

INTERSTATE COMMERCE COMMISSION HAMPERS THE REALIZATION OF THE GOALS OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 BY FAILING TO REGULATE RATES

Section 2(a) of the Household Goods Transportation Act of 1980, wherein Congress makes its declaration of policy, states as its first goal:

"(1) that a safe, stable and financially sound system of transportation of household goods by motor common carrier is vital to the maintenance of a strong national economy and a strong national defense. . . . "

We submit that the inaction of the Commission in the pricing area has in fact promoted financial instability in the motor carrier industry, particularly for the smaller household goods carriers, agents and independent contractor van operators. Under the guise of encouraging innovative pricing, the Commission has allowed all types of pricing schemes to go into effect regardless of their discriminatory or predatory nature. In fact, the Commission has apparently adopted a hands-off policy toward any pricing schemes, and will neither set standards for such pricing schemes nor enforce existing standards found in current provisions of the Interstate Commerce Act. (For a detailed discussion of those provisions, see testimony of the American Trucking Associations at oversight hearings on the Motor Carrier Act, before this Subcommittee, October 25, 1983).

In the aftermath of the HGTA, the affects of regulatory reform cannot be viewed effectively without also looking at the impact of the ICC's implementation of the ratemaking provisions of the Motor Carrier Act on the household goods motor carrier industry. At present, the most serious deficiency in deregulation of houshold goods transportation is a lack of knowledge about the real affects of the regulatory changes brough about by both Acts upon all industry segments, including van lines and their agents (many of whom are interstate carriers in their own right) as well as the independent, unaffiliated interestate carriers, and the independent contractor van operators. The negative impact of the ICC's liberal interpretation of its statutory rate regulation responsibilities on these elements of the interstate moving systems are readily apparent to those involved in the day-to-day operations of the industry.

The Nation's individual van line systems are often viewed as single entities, with the relative economic health of the van line masking the poor financial condition of the underlying infrastructure of independent small businesses—agents and independent contractor van operators. The widespread, destructive rate competition that continues unabated in today's market, coupled with sharply excalating taxes at the state and federal levels, described in the previous section, are crippling the small agents, independent carriers and owner-operators—all of whom are small business persons.

We fear that if the situation is not reversed, the inevitable result will be reduced competition, as those elements least able to compete in the cut-throat competitive arena will disappear or be absorbed into a few large transportation systems that survive. This end is in direct contravention of the goals Congress envisioned when it fashioned the 1980 regulatory reform Acts.

In the Motor Carrier Act, Congress included competition and innovative ratemaking as desirable goals in the National Transportation Policy. Likewise, in the HGTA Congress found in Section 2(a)(3) "that maximum flexibiliity on the part of the carriers in pricing of their services best serves the shippers of household goods carriers and allow a variety of quality and price options to meet market demands." But those goals were to be balanced by Congress' insistence that rates be reasonable, fair, and free of discrimination and predation. Unfortunately, the Commission has allowed these statutory standards to be violated by not actively monitoring houshold goods carriers' pricing schemes. Using the rationale that the MCA precludes it from interfering with market forces, the ICC has steadfastly refused to restrain rate cutting or to set any standards which would guide carriers as they set rates in this difficult economic climate.

While many of these discounted rate schemes may not on the surface appear destructive, in practical application they result in individual, consumer shippers and small commercial shippers subsidizing the discounts given to large shippers.

Not only do these pricing practices hurt smaller commercial shippers and individual shippers, they also harm the independent contractor van operators who haul the shipments. Since an owner-operator is usually paid on the basis of a percentage of the line haul charge, his revenues decrease correspondingly with the amount of the reduction, thereby making it difficult for him to receive a sufficient return on his investment to update his equipment or remain in business when he is caught in the squeeze of discounting rate schemes.

In today's carriers' fleets, the average age of an independent contractor's equipment has increased due to the resulting inability to update equipment. It is our belief that if the Interstate Commerce Commission would fulfill its statutory obligations to regulate rates, the moving industry's hauling arm, our skilled and industrious independent contractor van operators, would be able to earn a fair return on their investment.

There is presently no indication from the Commission that they are concerned about the predatory and discriminatory pricing practices that have become so commonplace in our industry. We believe that Congress did not intend for the ICC to allow such pricing schemes. The zone of reasonableness provisions in the MCA were enacted so that motor carriers could increase and decrease rates without the interference of the Commission. Instead, the ICC encourages a myriad of pricing schemes which are discriminatory in practice and predatory in nature. We are fearful that if such practices are allowed to continue, it will be impossible to maintain a soundly financed and viable household goods transportation system. Consequently, we believe that Congress should give some direction to the ICC in the interest of stabilizing pricing practices and insuring sound financial household goods motor carriers.

THE ICC IS PROPOSING RATEMAKING CHANGES THAT EXCEED STATUTORY AUTHORITY AND SUBVERT THE WILL OF CONGRESS

Recently the Commission instituted a new rulemaking proceeding entitled Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments. In this notice, the Commission proposes to withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. This is a prime example of the Commission attempting to deregulate by administrative fiat and not in consonance with statutory authority.

Section 14 of the MCA enacted 49 U.S.C. § 10706(b)(2) which states:

"As provided by this subsection, a motor common carrier of property providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may enter into an agreement with one or more such carriers concerning rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them. Such agreement may be submitted to the Commission for approval by any carrier or carriers which are parties to such agreement and shall be approved by the Commission upon a finding that the agreement fulfills each requirement of this subsection, unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101(a) of this title."

The section goes on to establish requirements that must be met for the agreement to be approved. One of those requirements is found in 49 U.S.C. § 10706(b)(3)(D), and provides that:

"No agreement approved under this subsection may provide for discussion of or voting upon single-line rates on or after January 1, 1984, except that such date shall be July 1, 1984, if the Motor Carrier Ratemaking Study Commission does not submit its final report under section 14(b)(4) of the Motor Carrier Act of 1980 on or before January 1, 1983. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

"(i) general rate increase or decreases if the agreement gives shippers, under specified procedures, at least 15 days notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission and if discussion of such increases or decreases is limited to industry average carier costs and, after the date of elimination of the antitrust immunity by this subparagraph, does not include discussions of individual markets or particular single-line rates. . . ."

As can be seen from the foregoing, the MCA only gives the Commission the authority to accept agreements between carriers to discuss rates if they meet the criteria of the Act. If such agreements do not meet the criteria of the Act or are inconsistent with the transportation policy as set forth in the Act, the Commission can reject the agreement. Nowhere does the Act give the Commission the authority to withdraw antitrust immunity for collective ratemaking on its own.

The Commission in the subject notice of the proposed rulemaking in the ICC Register at page 9 states: " . . . collective ratemaking with regard to rates on shipments under 1,000 pounds appears to inhibit competition and unduly discourage independent ratemaking. Such a result would be inconsistent with the transportation policy of Section 101010(a) and within the broad procompetitive reforms adopted in the MCA. For these reasons, if the proposal is adopted, antitrust immunity would be withdrawn for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. . . ."

The Commission has completely ignored the fact that the MCA has not given it the authority to withdraw antitrust immunity. These provisions allow the ICC to accept or reject agreements between carriers and to carry out the dictates of Congress that no voting or discussion of single-line rates will be allowed after July 1, 1984 unless they come under one of the exceptions. In this proceeding, the Commission is proposing to take action which is beyond their statutory authority. If the Commission does not believe the rates of shipments of 1,000 pounds or less are reasonable, the appropriate remedy is to institute a proceeding, in accordance with Section 13 of the MCA, to determine the reasonabless of the rate levels.

This proposal represents a direct challenge to congressional authority. Congress should admonish the ICC to follow the provisions of the MCA.

EXCESSIVE INDUSTRY-CONSUMER REGULATIONS CONTINUE TO HAMPER REALIZATION OF THE GOALS OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

One of the HGTA goals most welcomed by this industry was that of reducing government rules and paperwork to the maximum extent possible. Section 6 of the Act directed the Commission to review and revise all of the household goods carrier operational regulations to achieve a minimum of regulation and paperwork consistent with consumer protection. The Commission, ostensibly in response to that direction, promulgated what it described at the time as "new and reduced" regulations. The new rules were in reality, however, just a rehash of the old regulations. In adopting these rules, the ICC rejected the industry's proposal that we start anew from a zero-based concept and try to achieve the minimum essential regulation.

We will not repeat here the subjects covered in previous oversight testimony before this Committee in 1981 and 1982 dealing with this concern. However, our efforts have continued during the past year to correct the Commission's illusory implementation of Congress' goal to minimize regulation. After operating under the "new" rules for over a year, we surveyed our membership on any problems they had encountered in complying with the rules and whether they felt any of the requirements could be eliminated. Their responses convinced us the regulations did indeed need to be revised, and, accordingly, we petitioned the ICC on May 19, 1983, requesting the rulemaking proceeding be reopened and the rules reviewed for possible revision. To date, however, the Commission has not responded to that petition.

The AMC continues to believe that many of the current rules make no contribution to either competitive or consumer protection, and that it would be better to conduct a thorough review of the regulations, examining them from the bottom up and retaining only those that can be clearly justified. Only through this procedure can industry-consumer regulations be "minimized to the maximum extent feasible", as Congress directed in the HGTA. We believe the Committee should encourage the Commission to acknowledge our request for such a review to realistically minimize regulation and paperwork.

CONTINUED FAILURE OF THE DEPARTMENT OF DEFENSE TO COMPLY WITH THE MANDATE OF HOUSEHOLD GOODS TRANSPORTATION ACT TO MINIMIZE REGULATION

The trend toward deregulation of surface transportation and the practical application of deregulation principles to all household goods traffic, except that moved for the military, has exposed the obsolescent and counterproductive nature of DOD's regulatory approach. The DOD apparently considers its regulatory programs for household goods carriers immune from the directions of Congress. We see this evidenced on a continuing basis as Military Traffic Management Command (MTMC) rules and regulations multiply inspite of deregulating legislation such as the Motor Carrier Act, Household Goods Transportation Act, Regulatory Flexibility Act and Paperwork Reduction Act. We believe it is long past time for DOD to restructure its household goods transportation policies and procedures in light of the realities of a deregulated environment.

To support our position that DOD and its sub-agency, MTMC, are not complying with the will of Congress, we offered the following examples at last year's oversight hearings:

A. MTMC's Intrastate Rate Acquisition Program which requires intrastate carriers to depart from published tariffs and submit individual rate tenders. This will not only add a new layer of government regulation, but will require additional personnel for both military and industry to administer the program.

B. The Alaska Loss and Damage Program which proposes to dictate the method by which carriers transport household goods to Alaska, eliminating the carrier's option to use the method deemed best for the situation at the time.

C. The Carrier Evaluation and Reporting System (CERS) which requires an evaluation report and performance score to be proposed on every shipment in lieu of the easier method of reporting on the exceptions only

D. The Pack and Crate Contractor Program which institutes complex quality assurance procedures that are not justified by the simplicity of the tasks to be performed.

On September 27 of this year, MTMC announced a new Interstate Rate Solicitation Program, which, in essence, parallels the Intrastate Rate Acquisition Program. As in the Intrastate Program, this proposal involves the MTMC publishing their own military basic tender which all movers must use as a reference point in filing their rates as a percentage thereof. The household goods carriers would no longer be able to file a "me-too" rate tender unless they have previously filed specific rates individually in their own name. In the past many movers have avoided this cumbersome and expensive task, but if this program is adopted, they will be required to do so twice a year.

The MTMC solicitation letters for the interstate program states that the new program would not represent any additional workload or burden on the carriers. However, it also states that over 50 percent of DOD approved interstate carriers did not participate in either the Fall or Spring filing cycles. If over 50 percent of the DOD approved interstate carriers did not participate in either cycle, but the new rules require them to file individually during the filing cycles, how could this requirement not increase the workload and burden on those carriers?

There is no real justification for the added layer of bureaucracy that will result from the implementation of the Interstate Rate Solicitation Program. MTMC is apparently proceeding under an erroneous interpretation of the law. The principle justification underlying the MTMC action is the allegation that antitrust immunity for household goods carriers to collectively formulate the MRT tariff will expire July 1, 1984. This is simply not so. The Interstate Commerce Act, 49 U.S.C. § 10706(d)(1) provides that after July 1, 1984, household goods motor carriers may continue to collectively formulate general rate increases or decreases as long as discussion of such increases or decreases does not include discussion of individual markets or particular single-line rates. The AMC has been advised by the rate bureau's counsel that the discontinuance of antitrust immunity for discussion of single-line rates on July 1, 1984, will not affect the rate bureau activities as they have been conducted in the past.

It is also interesting to note that the Department of Defense and its sub-agencies, who have in the past taken the position that the directives of the Household Goods Transportation Act and Regulatory Flexibility Act to reduce regulatory requirements and administrative paperwork, do not apply to them, now state in their solicitation letter that they are required by the Motor Carrier Act of 1980 to promote independent pricing actions by carriers. It appears that the Department of Defense has decided selectively which laws shall apply to it.

The industry has been fortunate to receive Congressional assistance in obtaining a postponment of both the Intrastate Rate Acquisition Program and the Alaska Loss and Damage Program until in-depth reviews are completed. The General Accounting Office is conducting a study of the Intrastate Program, and the newly created Department of Defense Inspector General's Office is making a study of the Alaska Program. However, we believe that it is inappropriate for MTMC to initiate an

Interstate Program which parallels the Intrastate Program before the GAO report is completed on the latter.

Needless to say, the household goods carriers are quite upset with MTMC's continued record of imposing new paperwork requirements on them. This latest proposal, the Interstate Rate Solicitation Program, deserves the same careful study as we have urged for the other new regulatory programs DOD has imposed.

Present and proposed MTMC regulatory programs not only increase costs to the household goods industry without accomplishing DOD's goal of improving members' services, but even more important for the public at large, increase the military budget at a time when other federal agencies are drastically cutting their regulatory costs.

In general, MTMC establishes new rate programs to seek the lowest rates that can be obtained from movers. Then to cure any service failures that may result from cut-rate operations, MTMC imposes stringent quality control regulation. Keeping government transportation costs to a minimum is a laudatory policy that benefits all taxpayers. However, if the dollars saved thereby are ultimately spent on costly regulatory programs, and increased staffing at MTMC, there is no saving to the taxpayers. And if, in addition, the quality of service to the military member is not raised to a comparative level with other non-military commercial traffic as a result of MTMC's multilayered regulation, the whole process has been an exercise in futility.

More regulation is not the answer to better service performance. Congress determined this prior to the passage of the HGTA and MCA. If DOD would reject the traditional regulatory approach that problems can only be solved by expanding an existing program or imposing a new one, the industry would be in a much better position to provide the quality of service desired at a reasonable cost.

What is really needed at DOD is a small policymaking group for household goods transportation. This would free-up the large number of costly MTMC staff used to manage the peacetime household goods business and make them available for other DOD wartime logistic tasks.

Further, we believe that Congress should play a role in seeing that these necessary changes do take place. To that end, Mr. Chairman, we recommend that MTMC's involvement in regulating household goods carries be a subject of future congressional committee hearings, and we respectfully request this Committee's assistance in this matter.

CONCLUSION

The HGTA requires the appropriate authorizing committees of Congress to conduct annual oversight hearings to ensure that the Act is being implemented according to congressional intent and purpose. For the past three years we have testified before this Committee as to our concern that the HGTA was not being implemented according to congressional intent and purpose. We wish we could report here today that the situation is changing and the Commission and Department of Defense are commencing to interpret and implement the Act as Congress intended.

Unfortunately, that is not the case. The Commission appears to be following a scheme of its own to selectively deregulate the industry, particularly in ratemaking matters, which has only encouraged discriminatory and destructive competition and undermined the viability of the many small business entities that make up this industry. At the same time, however, the ICC remains in a regulator stance as far as the industry's operating regulations are concerned; and while publicly expressing the need to minimize all regulation, refrains from responding to our request for a review and revision of the long-challenged household goods rules. Likewise, the DOD continues to promote its own regulatory motives, refusing to accede to statutory directives from Congress where those directives conflict with DOD views.

The Conference therefore believes that the only way the goals of the HGTA can be achieved is for Congress to give affirmative direction to both the ICC and the DOD. We do not require either an end to ICC regulation, or a return to the restrictive regulations of the past. Congress struck an appropriate balance with the 1980 regulatory reform acts, and we continue to believe that the HGTA and MCA, if implemented as intended, would benefit both the public and the industry.

To that end, we respectfully request that the Committee direct the ICC and DOD to administer the law as written and as Congress intended to minimize regulation and ensure a financially sound household goods motor carrier industry.

Mr. Sunia. Please proceed.

TESTIMONY OF CHARLES C. IRIONS, PRESIDENT OF THE AMERICAN MOVERS CONFERENCE, AND RICHARD L. RUSSELL, PRESIDENT, AERO MAYFLOWER TRANSIT CO., INC.

Mr. RUSSELL. Thank you. Good afternoon, Mr. Chairman, members of the subcommittee. We appreciate the opportunity you have given us to comment on the implementation and the administration of the Household Goods Act.

It is our opinion that the act has in the past and will continue to benefit the public and the industry where it is appropriately administered and properly implemented, but it is our opinion that if the act is continued to be improperly administered as it has been, in our opinion, for the past 2½ to 3 years, irreparable harm could result to not only the public but to the industry as well.

We would like to quickly highlight a few of those items in our written testimony. Several proposals, as I am sure you are aware, have been made to further deregulate our industry and those proposals even contain provisions to sunset the ICC.

In our opinion, we do not think that, at this time, would be the best course of action. We are aware that some Government regulations are going to be required. It is contained in each of the proposals, particularly those regulations that pertain to safety and insurance requirements as well as consumer protection.

We would like to see those regulations be as limited as possible in any case, but we think that the ICC knows the transportation industry, that they are familiar with the industry, and therefore, are better equipped to regulate it than any Government agency of which we are familiar.

Another issue that is facing our industry today is one of taxes. Both Federal and State taxes have been increasing drastically in the last few years, and while we recognize that this committee may not be directly involved in the legislation to correct that problem, we would request that you work with other committees to bring some equity and uniformity to this tax area that we think is just totally out of control at this time.

One key aspect of regulation as it affects our industry is that of rates, and we have covered that in quite a bit of detail in our written testimony, but we feel that the rate area is one that is not being administered as intended by Congress.

The ICC has responsibility to assist in the achievement of one goal that is clearly stated in the act, and that is that of a stable and financially sound system of transportation. The act established a zone of rate freedom which seems to us to be a clear indication that Congress intended that some measure of rate regulation be maintained.

The act also mandates that rates should be reasonable, fair, and free of discrimination and predation. There has been literally no adherence to any of those principles by the ICC.

Under the guise of promotion of competition and innovative pricing, the ICC has taken an anything goes kind of attitude towards rates and because of all the uncertainties regarding the ultimate impact of these actions, the act properly called, we think, for a loosening up of rate regulations but not ones that totally eliminate regulation.

We do not think it is time to give up on the premise of that act. The impact is still not known. The ICC, though, acts as if they have the answers and they are going off entirely on their own in this case.

In a closely related area, the ICC is now proposing the elimination of antitrust immunity for collective ratemaking on all small shipments, those shipments that weigh less than a thousand pounds. Neither the Motor Carrier Act nor Congress has given the ICC the authority to withdraw antitrust immunity in any fashion, and we think Congress should admonish the ICC to follow the provisions of the act in this respect.

As we have testified in previous hearings, oversight hearings on the Household Goods Act, that in spite of deregulation legislation on the Motor Carrier Act and other acts that intend to reduce regulation, the Department of Defense and the Military Traffic Management Command continue to increase regulations.

Their latest program is one that would require all carriers to file specific rate tenders in their own name two times each year. Carriers would not be able to file "me-too" tenders unless they had previously filed specific rate tenders.

This is an additional, cumbersome and expensive burden placed on carriers that is not necessary at all. Needless to say, the household goods carriers are really upset with MTMC's continued record of imposing new paperwork requirements on all of us.

Present and proposed MTMC regulatory programs not only increase cost to the household goods industry without accomplishing DOD's goal of improved service to members but even more importantly for the public at large, increase the military budget at a time when other Federal agencies are drastically cutting their regulatory costs.

AMC believes that MTMC's involvement in regulating household goods carriers should be the subject of future congressional hearings, and we request that your committee assist us in that matter.

That concludes our comments, and we appreciate the opportunity to appear before you today and make those comments.

Mr. Sunia. Thank you, Mr. Russell.

I have a couple of questions for you. It seems that you are satisfied with the provisions of the Household Goods Transportation Act as they were enacted and that you are not asking for any statutory changes to the law as written. Am I correct in that assessment?

Mr. Russell. Yes, sir, that is correct.

Mr. Sunia. What, then, are you suggesting that the committee do in relation to the Federal agencies who have been administering the act? And I heard you state that a little while ago but I thought I would give you that question again.

Mr. Russell. You are right that we did cover a number of the items specifically, and there are more in the written testimony. But it is our opinion, and we feel pretty strongly about it, that the act has not been administered as it was written or as it was intended by Congress that it be administered.

There are a number of specific points in our written testimony concerning rates, entry, reduction of paperwork regulations, the Department of Defense regulations, and their burdensome nature.

We feel that if the act were administered as it was intended and as it was written that it would be something our industry could live with and would benefit the public and the industry at the same time.

Mr. SUNIA. Thank you.

Congresswoman Martin.

Mrs. MARTIN. No questions, Mr. Chairman.

Mr. SUNIA. Mr. Irions, did you have a statement to make?

Mr. IRIONS. No, Mr. Chairman, I did not. Thank you very kindly for your offer.

Mr. SUNIA. Thank you very much, gentlemen. Thank you for helping us out with your testimony. We will now hear from the Household Goods Carriers Bureau, Mr. Sidney Epstein.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF SIDNEY EPSTEIN ON BEHALF OF HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

My name is Sidney Epstein. I am the President of Allied Van Lines, Inc., with headquarters at Broadview, IL. This statement is submitted on behalf of the Household Goods Carriers' Bureau, Inc. (Bureau) and its approximately 1,700 member carriers in response to this Subcommittee's invitation to testify on government implementation of the Household Goods Transportation Act of 1980.

The Bureau is the principal ratemaking organization of the household goods carrier industry. It operates pursuant to a collective ratemaking agreement that has been filed with the Interstate Commerce Commission (ICC or Commission) under 49 U.S.C. § 10706. The Bureau's rates and charges apply throughout the United States and between points in the United States on the one hand, and, points in Canada and Mexico, on the other.

I have been in the moving industry my entire working life, more than 40 years. For a number of years I was a part of a family-operated moving concern that operated from Stamford, Connecticut. My family's business (Stamford Storage Company) operated prior to and after the introduction of motor carrier regulation in 1935. I am thoroughly familiar with the operations of small moving companies as well as large national van lines such as Allied. For 25 years I was employed by Neptune Worldwide Moving Inc., where I held a variety of positions from salesman to Vice President—Operations.

I have been very active in industry affairs throughout my business career. I currently serve on the Bureau's Board of Directors, and as Chairman of its Rates and Tariffs Committee. Additionally, I am a member of the Board of Directors of the American Movers Conference of American Trucking Associations, Inc.

The Household Goods Transportation Act of 1980 was a unique piece of legislation. By all accounts its Congressional draftors intended that household goods carriers would be subjected to a significant measure of special legislative treatment undoubtedly because of their uniqueness in the transportation industry. This situation arises no doubt as a result of the carriers' close contact with consumers and the strong dependence a mobile American society places on movers to facilitate an important part of our economic needs. There is, for example, no private motor carriage of personal effects traffic of the type generally seen in the American economy. Large corporations do not own or lease over-the-road truck equipment to move their employees' personal effects as they move the products they manufacture and distribute. It is therefore apparent that significant justification existed for separate consideration and treatment of household goods carriers during the 1980 legislative reform period. That air of concern and need for separate regulatory treatment, however, has not been translated into a regulatory system that will endure and in the process insure reasonably adequate service to the public at reasonable rates and charges.

This is the third time the Bureau has appeared at oversight hearings that were presumably intended to address the effects of the 1980 legislation and the manner in which it was being implemented according to Congressional intent. In 1981 and 1982 the Bureau provided its view of the effects of the 1980 legislation and specifically the manner in which the Interstate Commerce Commission and Department of

Defense were construing and implementing Congressional intent. Those earlier reports will not be restated here other than to say that their principal thrust was that Congress appeared to know what it was doing when it enacted the household goods legislation; the industry thought it understood what Congress intended but that the industry was having great difficulty reconciling clear legislative language with the numerous actions on inactions of the ICC that simply did not comport with the law that had been so recently enacted. Unfortunately this situation has not changed to one degree. In a nutshell, the ICC is completely embroiled in a program that is obviously intended to deregulate all phases of the operations conducted by household goods carriers—entry, economic and general enforcement of the Interstate Commerce Act and the regulations promulgated thereunder.

The Bureau is fully aware of the testimony presented to this Committee and the Senate Commerce Committee on behalf of the American Trucking Associations, Inc., in which ATA recited, chapter and verse, the litany of ICC actions or inactions that were intended to dismantle the present system. The Bureau supports that testimony including the specific criticisms ATA has leveled at the Commission. We would simply add that, from the standpoint of my industry, it is clear that the ICC as it is constituted today has made a mockery of the 1980 legislation enacted by Congress. If any question exists on this point I refer this Committee to the oversight testimony of the Chairman of the ICC presented to the Senate Commerce Committee on September 21, 1983, in which he reported on developments under the Motor Carriers Act of 1980 as he perceived them and made the following statement:

"But the fact of the matter is that right now any kind of a cost-benefit analysis, what we are doing and what it is costing the taxpayers for us to do it is absolutely ridiculous. We are engaged in the absolute sham of regulation for regulation's sake. It is noting more than a monumental paper shuffling operation, and the sooner it ends, the better. There is no reasonable public benefit involved. It is absolute nonsense."[1]

It would be difficult to imagine a clearer admission of dereliction of duty or malfeasance in office.

We urge this Committee to attempt to reconcile the statement of the Chairman of the ICC with the legislative history and Congressional Report that accompanied S. 1798, the bill that became the Household Goods Transportation Act. In our view the following excerpts from the Report of this Committee contained clear expressions of Congressional concern for the well-being of consumers in their dealings with household goods carriers. Just as importantly, it signaled a direction for Commission administration of the new Act.

"The fact that the household moving sector does business directly with individual shippers also sets it apart from the rest of the trucking industry. These shippers usually move only once or twice in their lives and, consequently, lack a thorough understanding of the industry and sufficient clout to negotiate with it. Their situation is made more vulnerable by the fact that the moves involve all of their personal possessions, which often are of a fragile nature." H. Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in [1980] U.S. Code Cong. & Ad. News 4271, 4272.

"In putting together this legislation, the Committee focused its attention on the individual shipper's special situation. . . . ." Ibid., at 3; 4273.

"The reported bill makes changes in three general categories. It reduces unnecessary Government regulation; it established new remedies and protections for consumers; and it furnishes additional pricing options for the carriers and the consumers." Ibid., at 4; 4274.

". . . the Committee recognizes that many users of household goods carriers are ordinary consumers unfamiliar with how the industry works and without the economic leverage of commercial shippers. These persons tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carriers shippers. Accordingly, this bill provides the Interstate Commerce Commission with special authority to protect these shippers." Ibid., at 5-6; 4275.

Against this background the industry finds itself in an era of no commission regulation of rates or charges, no enforcement of a ratemaking system or ratemaking standards as envisioned by the 1980 legislation and pure and simple Commission indifference towards the legislation enacted by Congress. According to the Commission, household goods carrier rates can never be predatory, there is no such thing as an unjust or unreasonable rate or charge, and carrier rates can never be discriminatory in their treatment of shippers in like circumstances.[2] How does all of this square with the 1980 legislation? The answer is it does not and it cannot. If Congress is unwilling to do anything to reverse the present direction of the Commission, regulation of the household goods carrier industry will collapse.

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[1] Senate Oversight Hearings, Transcript pages 28-29.

[2] Ex Parte No. MC-166, "Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980," decided September 13, 1983.

I will provide examples of Commission legislation by administrative fiat at a later point in this statement, but before I do, I believe it is appropriate to refer to another statement that tends to confuse my industry and raises questions as to whether Congress is truly concerned with Commission dismantlement of the regulatory framework underlying my industry. I refer to your able Chairman, Representative Jim Howard, who recently addressed a national trade convention of the moving industry and made the following observation concerning Commission administration of the 1980 legislation:

"One of the things we have found and it has come from the general trucking industry also, is that there are bureaucrats, there are members of the ICC, who think that they want to do things exactly the way they feel like doing them irrespective of what the Congress said, and the President said when he signed that legislation. This we are not going to let happen."[3]

Interestingly and most importantly, Chairman Howard has indicated that "This we are not going to let happen." If this Committee contemplates action that will put the reins on the Commission, the time to do it is now and not later if Congress intends that there will be a household goods carrier industry operating in a manner consistent with the objectives of the 1980 legislation. If this testimony appears to contain a note of urgency, I fully intend that it should. Let me make the point perfectly clear. The current situation has deteriorated to the critical stage and Congressional action is absolutely essential if the Commission's deregulation program is to stop.

For nearly 40 years the regulated moving industry has been under the impression that the ICC is an arm of Congress and that it receives its directives and, when appropriate, admonitions from Congress. Certainly this is not the case today. It is fair to say that the Commission takes its "marching orders" from the Administration. ICC administration of the Interstate Commerce Act is simply one facet of the overall deregulation movement that has been rampant during the past three years. The Administration has apparently directed the Commission to take no steps that would result in meaningful regulation of commerce in accord with existing law and also that any steps that are taken should be designed to dismantle rather than sustain the existing regulatory system. Once again, if Congress intends to do anything, the time has come for action.

It is now appropriate to point to specific illustrations of the manner in which the Commission has undertaken complete deregulation of my industry.

On October 6, 1983, the Commission issued a notice of proposed rulemaking announcing its intention to ". . . withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to shipments under 1,000 pounds."[4] This Commission proposal was fashioned in response to a petition filed on June 27, 1983, in which two shipper groups ask that the Commission entertain such a proposal. The Commission also goes well beyond the shippers' request and asks for comments on ". . . the question of whether antitrust immunity should be withdrawn altogether for motor carrier rate bureau activities." Viewed in light of the 1980 legislation, this is an astounding proposal.

We do not believe a serious question should exist concerning the Commission's statutory authority to adopt either of these proposals. Clearly, Congress has acted to permit motor common carriers of property to engage in collective ratemaking activities so long as bureaus function in accord with the requirements and restrictions set forth by Congress in Section 10706 of the Interstate Commerce Act, 49 U.S.C. § 10706. Collective ratemaking by groups of carriers pursuant to approved ratemaking agreements immunizes those carriers from prosecution under the antitrust laws. The Commission however, views the matter differently because it sees an opportunity in the shippers' proposal to further disrupt and dismantle the existing carrier ratemaking system. This is a perfect example of the Commission's willingness to seize upon an opportunity to drive towards complete deregulation of the household goods carrier industry.

On the other side of this same coin, in October of 1980 and again in May of 1981, the Bureau filed amendments to its collective ratemaking agreement to conform to the requirements of the 1980 legislation and on December 15, 1981, and January 6,

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[3] Speech of Rep. James J. Howard, before the American Movers Conference, Lake Tahoe, Nevada, October 3, 1983.

[4] Ex Parte No. MC-172, "Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments."

1982, the Bureau of filed petitions for declaratory orders[5] urging Commission resolution of important ratemaking questions involving the 1980 legislation and how it was to be construed by carriers in the formulation of just and reasonable rates and charges. The Commission has yet to act on the ratemaking agreements and it never responded to the Bureau's petitions. Last year at the oversight hearings held before this Committee the Chairman of the Commission, in response to questions involving those requests for Commission guidance, indicated that the Commission intended to address the issues posed in a recently instituted proceeding.[6] Of course, as I have noted, the Commission decision in that proceeding indicates that all is well in the carrier ratemaking area. It sweeps under the proverbial rug all questions concerning rate reasonableness, predation or discrimination. Quite obviously, the Commission has no intention of addressing any question that might provide guidance to the industry in its ratemaking activities or establish standards for reasonable carrier ratemaking. But the Commission is perfectly willing to expeditiously consider a shipper request that antitrust immunity for collective ratemaking for shipments weighing less than 1,000 pounds should be withdrawn or, even more drastically, that all motor carrier antitrust collective ratemaking immunity should be withdrawn.[7] The tactics employed by the Commission are so obvious that they must be construed as a clear rebuff of Congress' will as expressed in the 1980 legislation.

It is also appropriate to make another important point concerning the Commission's Ex Parte MC-172 proposal. The principal thrust of the shippers' petition prompting this proceeding is the allegation that rates applicable to shipments weighing less than 1,000 pounds have increased more rapidly than have rates applicable to shipments in higher weight categories. Assuming this is the case, the question arises as to why this has occurred. The answer lies in the Commission's unwillingness to suspend, investigate or modify proposed rate increases and in the process administer standards of ratemaking reasonableness. The shippers' petition is therefore an act of frustration directed not at the carriers' ratemaking practices but at the Commission.

In the case of household goods carriers, the average personal effects shipment they transport weighs approximately 5,700 pounds. Thus, any proposal to terminate the carriers' collective ratemaking activities for shipments weighing less than 1,000 pounds would so drastically disrupt the entire collective ratemaking process as to make it a nullity. We submit that the Commission would be quite pleassed to see that result. Also, the fact that personal effects shipments are concentrated in a narrow range of weight brackets, general increases are not proposed by weight categories and all percentage increases have general application across the board for all shipment weights. The Commission's notice of proposed rulemaking deliberately makes no distinction between freight and household goods carriers and is obviously designed to disrupt the entire collective ratemaking system whether freight or household goods.

I will now turn to another important illustration of Commission disregard for the will of Congress as contained in the 1980 legislation.

For the third consecutive year the Bureau is compelled to bring to your attention the Commission's failure to follow a specific Congressional directive. Section 4 of the Household Goods Act, 49 U.S.C. § 10734, requires that any carrier who offers binding estimates must conform to the tariff filing requirements imposed by Section 10762 of the Act. Also, the Act directs that binding estimates ". . . must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory." It seemed clear to my industry that Congress intended that some system of monitoring binding estimates would evolve as a result of the 1980 legislation and that the Commission would be in the forefront of enforcement of reasonable standards related to the binding estimate process. To date, absolutely nothing has occurred. Yet it is common knowledge in my industry that a myriad of binding estimate practices have evolved under the new legislation The legislative history underlying Section 4 of the Household Goods Act clearly indicates that consumer shippers were anxious to have available a means by which they could determine transportation charges at the time of shipment. In this way they could avoid controversies with carriers resulting from higher charges developed through the application of actual shipment weights and tariff charges. Price certainty, however, has given way to a binding estimate system that has absolutely no rhyme or reason. Some carriers quote binding estimates on flat charges without regard to shipment weight, distance or tariff charges. Others attempt to estimate shipment weight and apply an arbitrary rate per hundredweight tied to that weight irrespective of their published tariff rate. Other carriers disregard the normal factors considered when estimating and attempt to determine what another carrier may have quoted as a guaranteed price or binding estimate and undercut those charges. Many carriers also guarantee a given rate per hundredweight and/or a percentage discount that may or may not be published in their tariffs and base total transportation charges on actual weight.

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[5] Docket No. 38757, "Household Goods Carriers' Bureau Petition for Declaratory Order" and Docket No. 38769, "Household Goods Carriers' Bureau, Inc.—Petition for Declaratory Order—Lawfulness of Contract Carriage Rates." In Docket No. 38769 the Bureau also filed two supplemental petitions urging Commission action with no success.

[6] Ex Parte No. MC-166, supra.

[7] In its notice in Ex Parte No. MC-172, the Commission provides further evidence of its willingness to rush towards a deregulatory result by announcing that it intends to issue a final decision within 60 days of its receipt of comments.

A reading of Section 4 of the 1980 Act, 49 U.S.C. § 10734, reveals that Congress did not intend a binding estimate system through which carriers would simply exact whatever charge they felt was appropriate in light of the particular consumer's transportation needs. The statute, for example, requires that carriers avoid preferential treatment of shippers. Certainly this result is also consistent with another important provision resulting from the 1980 legislation, the prohibition against so-called "weight bumping." Section 11917 of the Act, 49 U.S.C. § 11917, defines weight bumping as the "knowing and willful making or securing of a fraudulent weight on a shipment of houshold goods". Of course we are not suggesting that carriers are willingly engaged in unlawful weight bumping practices with all of the attendant ramifications of criminal intent envisioned by Section 11917. We are suggesting, however, that the complete absence of Commission guidance in the area of binding estimates and guaranteed prices has caused a high degree of uncertainty among carriers and consumers as to how guaranteed charges are arrived at and whether in fact the shipper might have been better off simply allowing lawful tariff rates and charges determined by actual shipment weight to apply. Obviously Congress intended a reasonable approach to the offering of binding estimates and guaranteed prices that could admittedly take many forms. The Commission, however, has never interpreted the statute, has never attempted to set down what it believes Congress intended and, of course, in our view, has once again shirked its responsibility to consumer shippers.

During the 1982 oversight hearings the Bureau reported that the Department of Defense through its Military Traffic Management Command (MTMC) was engaged in a program that is designed to nullify the collective ratemaking engaged in by Bureau carriers under Congressionally established standards. Unfortunately this program has continued and, in fact, has become significantly more blatant.

In August of this year MTMC rejected a general increase in the basic transportation rate level maintained by Bureau carriers for the transportation of DOD traffic. That action forced the Bureau to seek relief in the United States Claims Court[8] leading to a Court induced acceptance by MTMC of the Bureau's general increase. That result however did not mark the end of MTMC's attempt to dictate carrier rate levels.

On September 27, 1983, MTMC announced a new program through which it intends to control the rate levels carriers offer for the transportation of military traffic. At the heart of this new program is a regulation that will forbid the filing with MTMC of collectively formulated Bureau tariffs. Also, MTMC has indicated that it intends to empower itself to reject any rate proposed by an individual carrier "because of unreasonably high price or other reasons."

It should be apparent that my industry's continuing dispute with DOD is far from over notwithstanding a Congressionally authorized procedure for the collective formulation and filing of tariffs with agencies of the United States Government. That authorization, of course, stems from Section 10721(b)(2) of the Interstate Commerce Act, 49 U.S.C. § 10721(b)(2), the mechanism employed by Bureau carriers to conduct a substantial part of their business with the governement over the past years.

The fact that the industry must continually combat efforts of this nature is in itself unfortunate and wasteful of carrier and government resources. Also unfortunate, however, is an apparent lack of candor in the military's dealings with industry. For example, a conference was held in Washington, D.C. on October 7, 1983, by selected members of the staff of MTMC to explain the DOD program to industry. It was held in spite of pleas from industry to hold a conference at a date when more industry representatives could be available and more time would permit a thorough analysis of the planned program. MTMC refused those requests and proceeded with its explanation of the new program. Part of that explanation included MTMC statements to the effect that motor carrier collective ratemaking antitrust immunity will expire with July 1, 1984, thus necessitating the planned program. When pressed to provide specifics underlying the legal conclusion that collective ratemaking authority will expire in 1984. The MTMC staff agreed that such an explanation would be provided to industry. The MTMC staff subsequently denied that this important subject was a part of their briefing given to industry and, having assumed that position, refused to provide any explanation supporting the legal rationale underlying its decision to foreclose collectively formulated tariffs. So once again industry must challenge the Department of Defense to maintain a posture it believes is fully in accord with applicable law. Section 10706(b) of the of the Interstate Commerce Act, 49 U.S.C. § 10706(b), authorizes motor carriers subsequent to July 1, 1984, to formulate, discuss and vote upon general increases or decreases applicable to single or joint-line rates. This is precisely what Bureau carriers have done for more than 20 years in their formulation of tariffs for the transportation of United States Government traffic.

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[8] No. 540-83 C, *Household Goods Carriers' Bureau, Inc.* v. *The United States.*

In this same connection, it should not go unnoticed that the Inland Traffic Directorate (general freight branch) of the Military Traffic Management Command apparently disagrees with the Personal Property Directorate. The general freight group now accepts and plans to continue to accept subsequent to July 1, 1984, Bureau formulated tariffs for the transportation of DOD freight traffic. The same is true of the important nonmilitary procurer of services for the federal government, the General Services Administration. These inconsistencies notwithstanding, the MTMC personal property branch appears fully intent upon adoption of its program foreclosing the filing of Bureau tariffs and, of course, industry must prepare itself to challenge these efforts just as it did recently in the Claims Court.

Members of Congress were extremely helpful last year when DOD proposed a similar program for application on intrastate shipments of personal effects traffic. Those efforts resulted in a referral to the General Accounting Office with instructions to undertake a thorough analysis of the planned program. A similar approach should be taken with this latest effort of DOD to halt collective ratemaking. The present system has been utilized for 20 years and it should not be disrupted on the strength of erroneous legal conclusions. We urge this Committee to intercede with the appropriate committees of Congress to require a thorough evaluation of the planned DOD program and its effects on government and industry.

CONCLUSION

This statement provides a "tip of the iceberg" view of the actions and inactions of the Interstate Commerce Commission following enactment of the Household Goods Transportation Act of 1980. My industry would welcome the opportunity to provide additional detailed explanations of the manner in which we believe the Commission has abused its discretion and flaunted the will of Congress. No question should exist in the minds of the members of this Committee as to how the household goods carrier industry specifically and the trucking industry generally views the Commission's administration of the 1980 legislation. The Commission's record is weighted in one direction—total deregulation of the trucking industry. Congress must involve itself in what the Commission is doing if the 1980 legislation is to survive in a meaningful way.

As for the attempts of the Department of Defense to refuse acceptance of collectively established tariffs, Congressional intervention is essential to obtain a reasoned analysis of the DOD program before it is forced on my industry.

Mr. SUNIA. Please proceed.

TESTIMONY OF SIDNEY EPSTEIN, PRESIDENT OF ALLIED VAN LINES FOR HOUSEHOLD GOODS CARRIERS' BUREAU, ACCOMPANIED BY JOSEPH M. HARRISON, PRESIDENT, HOUSEHOLD GOODS CARRIERS BUREAU, AND THOMAS M. AUCHINCLOSS, JR., LEGAL COUNSEL

Mr. EPSTEIN. Thank you, Mr. Chairman. Good afternoon. On my left is Mr. Joseph Harrison, who is president of the Household Goods Carriers Bureau and on my right, Mr. Thomas Auchincloss, who is counsel to the Household Goods Bureau.

Mr. Chairman, my name is Sidney Epstein, and I am president of Allied Van Lines with headquarters in Broadview, Ill. This statement is submitted on behalf of the Household Goods Carriers Bureau and its approximately 1,700 members.

The bureau is the principal ratemaking organization of the household goods carrier industry. The Household Goods Transportation Act of 1980 was a unique piece of legislation. By all accounts, its congressional drafters intended that my industry would be subjected to a significant measure of special legislative treatment undoubtedly because of our uniqueness in the transportation industry.

This situation arises no doubt as a result of carriers' close contacts with consumers and a strong dependence that the mobile American society places on movers to facilitate an important part of that economic activity.

There is, for example, no private motor carriage of personal effects traffic of the type generally seen in the American economy. Large corporations do not own or lease over-the-road truck equipment to move their employees' personal effects as they move the products they manufacture and distribute.

It is, therefore, apparent that significant justification existed for separate consideration and treatment of my industry during the 1980 legislative reform period. That air of concern and the need for separate treatment, however, has not been translated into a regulatory system that will endure and in process insure reasonably adequate service to the public at reasonable rates and charges.

This is the third time that the bureau has appeared at oversight hearings that were intended to address the effects of the 1980 legislation and whether it is being implemented according to congressional intent.

In 1981 and 1982, the bureau provided its views on the effects of that legislation and the manner in which the ICC and the Department of Defense were implementing congressional intent.

Those earlier reports will not be restated here other to say that there principal thrust was that Congress appeared to know what it was doing when it enacted the 1980 legislation. The industry thought it understood what Congress intended but that the industry is having great difficulty reconciling clear legislative language with the numerous actions or inactions of the ICC that simply did not comport with the law that had been so recently enacted.

Unfortunately, this situation has not changed to one degree. In a nutshell, the ICC is completely embroiled in a program that is intended to deregulate all phases of the operations conducted by household goods carriers, entry, economic and general enforcement of the Interstate Commerce Act and the regulations promulgated thereunder.

The bureau is fully aware of the oversight testimony presented to this committee on behalf of the American Trucking Association in which ATA recited chapter and verse the litany of ICC actions or inactions that were intended to dismantle the present system.

The bureau supports that testimony, including the specific criticisms ATA has leveled at the Commission. We would simply add that from the standpoint of my industry, it is clear that the ICC has made a mockery of the 1980 legislation.

If any question exists on this point, I refer this committee to the oversight testimony of the ICC Chairman, presented to the Senate

Commerce Committee on September 21, 1983, in which he reported developments under the Motor Carrier Act of 1980 and noted that the Commission was engaged in nothing more than a paper shuffling operation that he characterized as absolute nonsense.

It would be difficult to imagine a clearer admission of dereliction of duty or malfeasance in office.

We urge this committee to attempt to reconcile the statement of the ICC Chairman with the legislative history underlying the 1980 Act. Notwithstanding clear legislative command, my industry finds itself in an era of no Commission regulation of rates or charges, no enforcment of a ratemaking system or ratemaking standards and pure and simple Commission indifference.

According to the Commission, carriers rates can never be predatory. There is no such things as an unjust or an unreasonable rate or charge, and carrier rates can never be discriminatory in their treatment of shippers in like circumstances.

How does all of this square with the 1980 legislation? The answer is that it does not and it cannot. If Congress is unwilling to do anything to reverse the present direction of the Commission, regulation of my industry will collapse.

It is also appropriate to refer to another statement that tends to confuse my industry and raises questions as to whether Congress is truly concerned with Commission dismantlement of the existing regulatory framework.

I refer to a statement of Chairman Jim Howard evidencing knowledge of recent actions of the Commission. Most importantly Chairman Howard indicated that the Public Works Committee was not going to let the Commission ignore the will of Congress.

My industry's response to this is that if this committee contemplates action that will put the reins on the Commission the time to do it is now, not later.

If this testimony appears to contain a note of urgency, I fully intend that it should. The current situation has deteriorated to the critical stage and congressional action is absolutely essentially if the Commission's deregulation program is to stop.

My complete statement contains specific illustrations of the manner in which the Commission is undertaking complete deregulation. Because of time constraints, I will not detail those specifics now, but I do urge you to give them careful consideration.

Turning to the Department of Defense, during the 1982 oversight hearings, the bureau reported that the DOD through its military traffic management command, called MTMC, was engaged in a program that was designed to nullify the collective ratemaking engaged in by bureau carries under congressionally established standards.

Unfortunately, this program has continued and, in fact, has become significantly more blatant. Just last month, a new program was announced to control rate levels carriers will offer for the transportation of military traffic.

At the heart of this program is a regulation that will forbid the filing of bureau tariffs. Also MTMC has indicated that it intends to empower itself to reject any rate proposed by an individual carrier because of unreasonably high price or other reasons.

It should be apparent that my industry's continuing dispute with DOD is far from over notwithstanding a congressionally authorized procedure for the collective formulation and filing of tariffs with agencies of the U.S. Government.

It should not go unnoticed also that the general freight branch of MTMC apparently disagrees with the personal property branch since it now accepts and apparently plans to continue to accept bureau formulated tariffs.

The same is true of the important nonmilitary procurer of service for the Federal Government, the General Services Administration. These inconsistencies notwithstanding, the MTMC personal property branch appears fully intent upon adoption of its program.

Members of Congress were extremely helpful when DOD proposed a similar program for application in intrastate shipments. Those efforts resulted in a referral to the General Accounting Office with instructions to undertake a thorough analysis of the planned program.

A similar approach should be taken with this latest effort of DOD to halt collective ratemaking. We urge this committee to intercede with the appropriate committees of Congress to require a thorough evaluation of the planned DOD program and its effect on Government and industry.

In conclusion, my complete statement to this committee provides just the tip of the iceberg, a view of the actions and the inactions of the ICC following enactment of the 1980 legislation.

My industry would welcome the opportunity to provide additional detailed explanation of the manner in which we believe the Commission has abused its discretion and flaunted the will of Congress.

No question should exist in the minds of the members of this committee as to how the household goods carrier industry specifically and the trucking industry generally view the Commission's administration of the 1980 legislation.

The Commission's record is weighted in one direction, total deregulation of the trucking industry. Congress must involve itself in what the Commission is doing if the 1980 legislation is to survive in any meaningful way.

As for the attempts of the Department of Defense to refuse acceptance of collective established tariffs, congressional intervention is essential to obtained a reasoned analysis of the DOD program before it is forced on my industry.

I will be glad to answer any questions that you may have. Thank you, Mr. Chairman.

Mr. SUNIA. Thank you, Mr. Epstein.

A major provision in the Household Goods Transportation Act was the binding estimate provision. How extensively are the carriers utilizing binding estimates? And has the use of binding estimates resulted in a decrease in the number of consumer complaints?

Mr. EPSTEIN. Mr. Chairman, I would say that the binding estimates are used quite extensively in the industry. However, I would point out that here, again, sir, the ICC has not followed the 1980 legislation and as of this moment had no rules in effect as it concerns binding estimates nor any way of policing it nor have they made any attempts to police to see whether or not the consumer is being properly treated and/or the carriers are guilty of any violations.

My personal opinion is that the complaint situation with the ICC has been impacted in any way by binding estimates or the absence of them. We are convinced after a complete study that the numbers of complaints originally stated by the ICC were suspect at best, that they included many, many inquiries that were certainly not complaints and many phone calls that pertain just to pure questions and again did not imply any complaint.

I think that the lack of complaints at this time may have to do with some way in which the Commission is handling those complaints or just the general nature of business and the lower volume of business that this industry has experienced over the past couple of years.

Mr. Chairman, that matter is covered very thoroughly in my statement that has been submitted to the committee.

Mr. SUNIA. Congresswoman Martin?

Mrs. MARTIN. Just briefly, Mr. Epstein, if you comment, although your industry services many, most consumers know of it when they move from home to home or apartment to home. Would you like to comment on how the current rate structure and either the lack of its efficacy or its worth affects the ordinary consumer who might use your business.

Mr. EPSTEIN. I suppose the best answer would be that it impacts individual consumers in different ways depending upon where they move from and to, the time of the year, the time of the week, the impact of competition in a particular area, and probably a multitude of other factors.

I can say that many consumers are being prejudiced. Many consumers are experiencing preferential rates. That the carriers themselves because there are no rules set forth by the ICC in many, many instances have just ignored the existing tariff and are pricing the product based on what the traffic will bear.

Here again, if you look at my statement that has been submitted to the committee, you will find that laid out pretty much in detail what the situation is today. It is chaotic.

Mrs. MARTIN. Thank you.

Mr. SUNIA. I have one more question. How important is the rate bureau process to the household goods carrier industry and how extensively is it utilized by the industry? Does the process benefit consumers?

Mr. EPSTEIN. Yes, it does, Mr. Chairman. The Household Goods Carriers Bureau is extraordinarily important to this industry because it provides a stability of rate and an appropriate process to measure the cost of providing service.

Probably the most important thing is that among the several thousand household goods carriers in the United States, the vast majority are small carriers, sometimes agents of van lines, sometimes operating independently. Those folks do not have the capability, they do not have the financial capability nor the physical capability of printing and offering their own tariff.

They certainly do not have anywhere near the capability of coming to grips with cost items that are so important to the financial viability of this industry. With those thoughts: In mind, the Household Goods Carriers Bureau has an extraordinary value to the industry as a whole.

Incidentally, the household goods industry also is one that makes very wide use of joint rates which is something that the ICC seems to gloss over most of the time, and those joint rates would be totally impossible to formulate if there were not a Household Goods Carriers Bureau in position to supervise that.

That would have an incredible burden on the general consumer as he arranged to transport his goods from one State to another.

Mr. SUNIA. Mr. Epstein, I want to thank you very much and we appreciate your appearance and testimony before this committee. Let me say that when our chairman promises that he will make the agencies recognize these problems, he will.

I think this committee has a record of making the agencies come forward and take them to task, take them all the way in order to make sure that the will of Congress is not ignored by the agencies.

I want to thank you again for your testimony and your appearance before the committee this afternoon.

Mr. EPSTEIN. Mr. Chairman, if I may be just so presumptuous, I would like to suggest that the committee might be very enlightened were they to have the commissioners sitting before you and ask them to go step by step through the household goods legislation and ask them how the various aspects of that legislation have or have not beem implemented.

Thank you.

Mr. SUNIA. The chairman of the full committee has indicated this morning that a hearing is scheduled for mid-November and the ICC will come before the committee.

Mr. EPSTEIN. Thank you.

Mr. SUNIA. We will now hear from the Movers' & Warehousemen's Association of America, Inc. Mr. McBrayer.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF JOHN T. MCBRAYER, GOVERNMENT LIAISON OFFICER, MOVERS' & WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.

My name is John T. McBrayer. My appearance here today is on behalf of the Movers' & Warehousemen's Association of America, Inc., a national voluntary membership organization, with headquarters at 1001 North Highland Street, Arlington,Virginia 22201.

The membership of the M&WAA is comprised of small businesses.

My remarks shall be brief. If they appear blunt, it is only because the subject before this Subcommittee is too important and too much damage may already have been committed in pursuit of theories which discard two hundred years, or more, of civilizing influences under the English common law and which reward only the large and greedy.

The concept of common carriage belonging to all to be shared equally, without preference, prejudice or discrimination, has all but disappeared.

The idea that the market place will set sound rates is *not* sound thinking, when it involves so important a matter as the nation's transportation. The market place for large elements of transportation is the individual. In the transportation of household goods, the shipper is often the housewife. For every reduction for a large shipper, someone else has to pay more or forego the service altogether.

If a member of my family in another city dies without giving me more than seven days' notice for advance travel arrangements. I will have the clear options, as an individual in need of transportation, of expending substantially more time and money for that transporation or forego the funeral. By substantial, I mean two or three times, or more, than the rate which otherwise would prevail.

The perception as to whether or not so-called "deregulation" is a success relates closely to whether or not one is the beneficiary or victim of predatory practices.

The adequacy or not of existing statutes seems not so much the problem as the free-wheeling interpretation of such statutes and the failure of the "independent" agency to rise above importunists who seek to hasten the scuttling of that agency. Failure of the Interstate Commerce Commission to give full force and effect to the existing statutes to avert predatory rate and control practices is being publicly viewed as a means to justify an early "sunsetting" of that agency.

Never before, not even when the voice of small businesses initiated regulation of the railroads and state regulatory commissions persuaded Congress of the need for federal regulation of the other modes of transportation, has there been so urgent a need for this Congress to take hold of its responsibility to remedy the harm being done.

The observation that a vacuum will not long exist is being shown to be valid, by so-called "deregulation." What we have developing to replace ICC regulation "in the public interest" is user regulation by large government and industrial enterprises in each such user's sole interest. For example, there appeared in the Federal Register of October 3, 1983, at page 45144-45, a notice by the Department of Defense of a significant change in the method of soliciting rates for interstate shipments of household goods. The change involves replacing the basic military rate tenders now published by the carriers' rate publishing organizations, such as the M&WAA, with a government "solicitation" which, essentially, is to be a similar publication of baseline rules, rates and charges (except those which DOD considers unacceptable or not in its best interest) from which carriers would participate individually by filing a percentage of the single factor or segmented rates.

The stated reason for such change is that it is "in the overall best interest of the Department of Defense." 48 FR 45144 (copy attached). It appears evident that that agency seeks to intrepet both the letter and the spirit of federal deregulation in such a manner as very substantially add to its control and management of the carriers in its own best interest, as it sees that interest, and not as a truly efficacious, independent agency would determine the best interest of the public.

What is happening at DOD also is happening at other agencies, such as the General Services Administration, and by large corporate enterprises throughout the nation. When one adds up the cost to the taxpayer of the additional activity at these government agencies and at other government agencies which are taking up the slack or the activities of the ICC (as at the DOT), the fifty, sixty or seventy million dollars appropriated annually for the ICC will be paltry by comparison.

Moreover, and more important, the loss of affordable, efficient transportation to the nation's millions of individuals and small businesses will have a telling effect on the nation's economic recovery and its stamina to deal with future crises.

Of course, the advocates of deregulation, sunsetting, and so on, issue reports to show large gains in revenues and earnings. Such gains, however, show only the gains made by the largest elements of each industry, *not* the losses of the intermediate and smaller elements.

When an agency allows the largest units to saturate a community with subsidiaries, it is not surprising that those largest units show gains, even in a recession. It is no answer to transfer power to another agency in another branch of government, which has less experience and interest in curbing excesses and which is more amenable to political pressures. The only answer is to require the agency to perform the duties delegated to it.

When an agency issues operating authority to enterprises which operate no equipment and possess no capability other than administrative control, crafts and skills soon are secondary to isolated centers of profit. The scramble for disappearing areas of profit feeds on itself. Rates deteriorate, Then, equipment is not replaced. Next, capacity diminishes at an accelerating rate.

To take another example of DOD responses to developing situations, last month action was taken by the Military Traffic Management Command, authorizing it to require a carrier to furnish "complete audited financial statements with an opinion by a [sic] independent certified public accountant at the request of MTMC" [copy attached]. As may be seen in that attachment, the stated reason is that "there has been a noticeable increase in the number of indications of carriers (freight forwarders) having serious financial problems which could jeopardize their ability to remain DOD approved."

Again, abandonment by the Commission of any responsibility to oversee the fitness of holders of operating authority has generated the need for that activity to be undertaken by another agency of the government.

From the standpoint of the carrier, the full implication is disastrous. A complete financial audit by an independent CPA is not a cost which intermediate or small carriers can tolerate. Such audits cost thousands upon thousands of dollars. Reading and understanding such statements will require high priced personnel, who will not, at MTMC headquarters, have the opportunity to be as knowledgeable as the field staff of the Commission who regularly visited and inspected the carrier's books and could relate that carrier's operations to those of other carriers in the area.

Let me make it clear that, in this instance, I am not being critical, of DOD or its programs, or its motives. With 170 shipping installations and an obligation to the public to spend its resources correctly, the issue is not whether *it* should act in what it conceives to be its best interest. So, also with the large corporate enterprise which is convinced of its manifest destiny to exercise absolute control or ownership of all it touches, on behalf of its stockholders.

The real issue, if I may suggest it, is whether the decisions increasingly made by these large users, government and private enterprise, ought not to be continued as the responsibility of an independent efficacious agency of the Congress which is capable and competent to enforce specifically delegated authority in the overall public interest (including the interests of shippers, carriers and the consuming public).

The fundamental concern of this Congress ought to be whether the nation will once again have a transportation system serving the needs of all members of the public, or a system whereby only the largest users will be served and the rest of the nation be left to the predatory practices of a limited number of surviving carriers.

There is a real need for the Congress to focus on the specific needs of small carriers, including the need for collective rate making and protection from predatory practices by large users and competitors. A real need exists, also, for the Congress to protect such commerce from the avarice of multiple taxing agencies in every jurisdiction. The House of Representatives took giant steps in the right direction when, three times in the 1960's, the Judiciary Committee reported out and the House passed legislation which would have permitted a number of such taxes only upon a showing of a jurisdictional *nexus* sufficient to warrant an imposition. That legislation was lost each time sent to the Senate Finance Committee. The conditions warranting that legislation then are more extreme today. A "dark age" is descending on this nation for much the same reason as in the Middle Age of Europe—too much fractionalism, greed and avarice. Self interest pursued to its ultimate limit to the exclusion of the common interest of all members of the society will feed on itself until everything that can go wrong will go wrong.

In closing, I hope that I have represented the views of the M&WAA memberships adequately. Let me add, however, that my advanced years permit me to speak out from the vantage point other than self-interest. In terms of immediate knowledge of what is transpiring in transportation and of long years of responsible activity in serving the shipping public, I am able to be concerned about the long-term effects of abandonment of an independent agency exercising a civilizing and leveling effect in the provision of transportation available and affordable to all.

Thank you.

bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Diane Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

September 29, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 2 and 5, 1981, as amended, between the Governments of the United States and Mauritius, and in accordance with Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on October 1, 1983 entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in Categories 336, 339, 345, 438, 445, 446, 636, 639, 645, and 646, as a group, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1983 and extending through September 30, 1984, in excess of 115,000 dozen.

In carrying out this directive textile products in Categories 336, 339, 345, 438, 445, 446, 636, 639, 645, and 646, as a group, which have been exported to the United States during the twelve-month period beginning on October 1, 1982 and extending through September 30, 1983, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during that twelve-month period. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The level set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of October 2 and 5, 1981, between the Governments of the United States and Mauritius which provide, in part, that (1) the level may be exceeded by not more than 10 percent for carryover and carryforward and (2) the two governments agree to consult on any question arising in the implementation of the bilateral agreement. Any appropriate adjustments under the provisions of the agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Mauritius and with respect to imports of cotton, wool and man-made fiber textile products from Mauritius has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-26907 Filed 9-30-83; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Domestic Household Goods Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of change in procedures for soliciting rates for interstate shipments of Department of Defense (DOD) household goods.

SUMMARY: The Military Traffic Management Command (MTMC) is consideing the modification of procedures associated with the acquisition of rates for interstate shipments of household goods, effective with the 6-month cycle commencing with May 1, 1984. The MTMC rate solicitation will replace basic military rate tenders (MBTs, MRTs, GRTs) now published by the Moving Industry Rate Bureaus or Associations.

This change in acquisition procedures, from using collectively set bureau rates to an MTMC solicitation document requiring all carriers and forwarders independently and individually to file rate submissions, is in the overall best interest of the Department of Defense (such as increasing competition and protecting DOD shipper interests) and reflects our recent experience of a significantly increasing number of independent rate filings coming into MTMC from individual carriers.

The Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34-R, is proposed to be changed as follows: *Chapter 2, Glossary of Terms and Chapter 6 para 6001h* by adding the following:

Household goods domestic rate solicitation. An acquisition procedure for the solicitation of rates for domestic shipment of DOD household goods which requires submission of individual rate tenders by individual carriers through independent action. The government solicitation contains terms and conditions and may contain baseline rates and charges.

The MTMC acquisition official concerned will determine when and under what circumstances in achieving economy, efficiency and cost effectiveness as directed under DoD Directives 4500.9 and 4500.34, the foregoing acquisition procedure will be utilized instead of submission of Military Basic Tenders by carrier bureaus and associations authorized elsewhere in this regulation or in pertinent MTMC instructions for filing tenders for personal property shipments.

Where a determination is made to utilize the household goods domestic rate solicitation procedure, solicitations for competitive rates will be sent to and responsive tenders will be received from DoD-approved individual carriers and licensed freight forwarders. Traffic requirements will be granted to those low rate responsible carriers and freight forwarders whose tenders are responsive and most advantageous to the government. A responsible carrier is one who:

(a) Is listed on the DoD list of approved carriers and freight forwarders.

(b) Has appropriate operating authority and licenses;

(c) Has adequate financial resources.

(d) Has the ability to comply with required delivery performance schedules.

(e) Has a satisfactory record of performance and integrity and is otherwise qualified under applicable law and regulations.

Tenders or rate bureaus and associations engaged in collective ratemaking functions inconsistent with the government's goal to maximize competition, will not be solicited nor received.

Chapter 1, para 1002c is proposed to be changed by adding the following: Rates for household goods transportation services may be solicited on a competitive basis. Any and all rates received may be rejected because of unreasonably high price or other reasons. Any other MTMC sponsored regulations that may require changing will be changed, if this should be necessary due to human oversight.

DATE: A briefing for industry will be held at the National Guard Association Memorial, 1 Massachusetts Avenue NW., Washington, D.C. 20001 at 1:00 pm on October 7, 1983, to explain the new procedures and answer questions.

COMMENTS: Written comments will be considered if submitted before noon on October 17, 1983.

FOR FURTHER INFORMATION CONTACT: LTC Robert P. Coleman, HQ Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, VA 22041.

ADDRESS COMMENTS TO:

Commander, HQ, Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041 (File: SFRA).

This request for comments and the resulting determinations are being made under the authority of 10 U.S.C. 2301-2314 and DoD Directive 4500.9 and DOD 4500-34-R.

Nathan R. Berkley,

Colonel, GS, Director of Personal Property.

September 28, 1983.

[FR Doc. [illegible] Filed 9-29-83; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Performance of Commercial Activities; Announcement of Program Cost Studies

Correction

In FR Doc. 83-24217 beginning on page 40541 in the issue of Thursday, September 8, 1983, make the following corrections:

1. On page 40543, in the second column, under "Naval Surface Weapons Center, Dahlgren, VA," the sixth through the twelfth lines should have read:

"Machine Parts

Buildings and Structures (Other Than Family Housing)

Recreational Library

Other Recreational, Morale and Welfare Activities".

2. Also on page 40543, in the second column, the first three entries under "Navy Regional Data Automation Facility, Norfolk, VA," namely, "Railroad Facilities," "Insect and Rodent Control", and "Other Utilities", should have appeared as the last three entries under "Naval Surface Weapons Center, Dahlgren, VA," above.

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

Training Personnel for the Education of the Handicapped Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Fiscal Year 1984 New Applications.

Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program.

Authority for this program is contained in Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act.

(20 U.S.C. 1431, 1432, and 1434)

Applications may be submitted by State educational agencies, institutions of higher education, and other nonprofit institutions or agencies.

The purpose of the program is to improve the quality and increase the supply of special educators and support personnel.

The Secretary published final regulations for the Training Personnel for the Education of the Handicapped program on May 24, 1983 (48 FR 23208).

Prospective applicants are advised that the Congress is considering legislation to amend the statutory authority for Part D of the Education of the Handicapped Act which authorizes programs for training personnel for the education of handicapped persons. If such legislation is enacted with respect to fiscal year 1984 appropriations which requires a substantive change in any of the priorities or other requirements for new projects, applicants will be given the opportunity to amend or resubmit their applications.

Closing date for transmittal of applications: Applications for new awards should be mailed or hand delivered on or before November 28, 1983.

Applications delivered by mail: Applications must be addressed to the Department of Education, Application Control Center, Attention: (insert appropriate CFDA Priority Number), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

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FOR RELEASE:
OCTOBER 3, 1983

(202) 275-7252
BROWN

NATION'S LARGEST TRUCKING COMPANIES REPORT LARGE GAINS IN REVENUES AND EARNINGS FOR THE SECOND QUARTER OF 1983

Revenues, net carrier operating income and net income of the Nation's largest trucking companies increased substantially in the second quarter of 1983, compared to the same period of 1982, according to a report released today by the Interstate Commerce Commission's Bureau of Accounts.

The report compares the earnings of 100 of the largest common carrier trucking companies for the quarter and twelve months ending June 30, 1983, with the corresponding periods in 1982. This report excludes the two United Parcel Service (UPS) carriers, whose operations are dissimilar and highly specialized, i.e., pickup and delivery of small packages. The 100 carriers in this report account for about 44 percent of the total revenues generated by approximately 3,000 Class I and II regulated trucking companies.

A comparison of the second quarter operations reveals that:

... Operating revenues increased 3.7 percent to about $4 billion.

... Net carrier operating income rose substantially, by 80.6 percent to $219.6 million.

... Net income also improved significantly, by 78.2 percent to $121.5 million.

... Revenue tons hauled declined 3.4 percent.

... Of these 100 carriers, 62 reported increases in operating revenues, 71 reported improved net carrier operating income, 65 reported improved net income, and 52 reported increases in tonnage hauled.

... This increase in revenues and earnings, reflecting the pick-up in the Nation's economy, represents a continuation of the improvement shown in the first quarter of 1983 compared to the first quarter of 1982.

... These improvements in earnings in the first and second quarters of 1983 are the first year to year quarterly increases in earnings for the 100 largest trucking companies since the second quarter of 1981.

A comparison of the results for the 12-month periods shows that:

... Operating revenues remained about the same, approximately $15.6 billion, as revenue tons hauled declined 5.8 percent.

... Net carrier operating income increased 33.7 percent to $430.8 million.

... Net income increased 20.3 percent to $220.5 million.

... The operating ratio (ratio of operating expenses to operating revenues) decreased (improved) to 97.2 percent from 97.9 percent.

... Rate of return on shareholders' equity increased to 7.57 percent from 6.17 percent.

The net income discussed above and used in the computation of return on shareholders' equity represents net income before any net extraordinary charges for the write-down of operating rights.

This report is based primarily upon quarterly reports submitted to the Commission. The figures have not been verified by the ICC.

Copies of this report can be obtained from the Office of the Secretary, Publications Room B-229, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 275-7833.

TOPIC NO: 123/83

PROPONENT: Military Traffic Management Command (MT-PPQ)

SUBJECT: Proposed Changes to Para 6001b(1)(c) DOD 4500.34-R and Para 9.a.b. Tender of Service, Appendix A, DOD 4500.34-R

DISCUSSION: Para 6001b(1)(c), PPTMR and Para 9, Tender of Service currently requires carriers to submit financial statements when requesting initial approval from MTMC to participate in DOD traffic. In addition, Para 9.b, Tender of Service requires carriers to submit financial statements upon request from the Commander, MTMC to determine a carrier's qualification to remain DOD approved.

However, the current wording does not require the financial statements to be audited with an opinion by a certified public accountant.

There has been a noticeable increase in the number of indications of carriers (freight forwarders) having serious financial problems which could jeopardize their ability to remain DOD approved. Para 9b, currently allows MTMC to request financial statements from a carrier when such indications are received. However, under current procedures, there is no basis to determine if financial statements submitted reflect the carrier's true financial position.

RECOMMENDATION: Change Para 6001(1)(c) and Para 9, Tender of Service, as follows:

a. Para 6001(1)(c): All carriers must furnish complete audited financial statements with an opinion by a independent certified public accountant at the request of MTMC.

b. Para 9: Financial information. a. I will provide audited financial statements with an opinion by a independent certified public accountant, when requesting initial approval from MTMC to participate in DOD traffic consisting of Balance Sheet, Profit and Loss Statement and Net Worth Statement, for the last two taxable years. I understand that my DOD approval will be based on the acceptable financial condition of my company.

Mr. SUNIA. Please proceed.

TESTIMONY OF JOHN T. McBRAYER, THE MOVERS' & WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.

Mr. MCBRAYER. Mr. Chairman, I will be brief. The membership of the Movers' & Warehousemen's Association of America is comprised of small businesses, and we feel some things that I will very briefly mention here today.

We feel that the concept of common carriage belonging to all and to be shared equally without preference, without prejudice and without discrimination is on its way out or disappearing.

The idea that the marketplace will set sound rates, we question that, particularly when it involves so important a matter as the Nation's transportation. The marketplace for large elements of transportation is the individual.

In the transportation of household goods, the shipper is very frequently the householder. For every reduction for a large shipper in rates, someone else has to pay and pay more or forgo the service altogether.

The perception as to whether or not so-called deregulation is a success relates closely, we think, to whether or not one is the beneficiary or the victim of pricing practices. The adequacy or not of existing statutes seems not so much the problem as the free-wheeling interpretation of such statutes and the failure of the independent agency to rise above the importunists who seek to hasten in the scuttling of that agency.

Failure of the Interstate Commerce Commission to give full force and effect to the existing statutes to avert predatory rate and control practices being publicly viewed really as a means to justify an early sunsetting of that agency as we see it.

The observation that a vacuum will not long exist is being shown to be valid by so-called deregulation, we think. What we have developing to replace ICC regulation in the public interest is user regulation by large Government and industrial enterprises in each such user's sole interest.

For example, there appeared in the Federal Register of October 3, 1983, a notice by the Department of Defense of a significant change in the method of soliciting rates for interstate shipments of household goods. That was mentioned by the speaker you just heard.

The change involves replacing the basic military rate tenders now published by the carriers' publishing organizations including Movers and Warehousemen's Association of America with a Government solicitation which essentially is to be a similar publication of baseline rules, rates, and charges except for those which DOD considers unacceptable or not in its best interests upon which carriers would participate individually by filing a percentage of the single factor or segmented rates contained therein.

The stated reason for such change is that it is in the overall best interest of the Department of Defense. It appears evident that the agency seems to interpret both the letter and the spirit of Federal regulations in such a manner as to very substantially add to its control and management of the carriers in its own best interests as it sees that interest and not as a truly efficacious independent agency would determine the best interests of the public.

What is happening at DOD also is happening at other agencies such as the General Services Administration, and by our large corporate enterprises throughout the Nation. When one adds up the cost to the taxpayer of the additional activity at these Government agencies and at other Government agencies which are taking up the slack of the activities of the Interstate Commerce Commission, the $50 or $60 or $70 million appropriated annually for the ICC will be paltry by comparison.

Moreover and more important, the loss of affordable, efficient transportation to the Nation's millions of individuals and small businesses will have a telling effect on the Nation's economic recovery we think, and its stamina to deal with future crises.

To take another example of DOD responses to developing situations, last month action was taken by the Military Traffic Management Command authorizing it to require a carrier to furnish, "complete audited financial statements with an opinion by an independent certified public accountant at the request of MTMC"—a copy of that is attached.

As may be seen in that attachment, the stated reason is, "There has been a noticeable increase in the number of indications of the carriers having serious financial problems which could jeopardize their ability to remain DOD-approved."

Again, abandonment by the Interstate Commerce Commission of any responsibility to oversee the fitness of holders of operating authority has generated the need for that activity to be undertaken by another agency of the Government.

From the standpoint of the carrier, the whole implication is disastrous. A complete financial audit by an independent—I mean from the standpoint of a smaller carrier I should say that. A complete financial audit by an independent CPA is not a cost that intermediate and small carriers can tolerate. These audits cost thousands and thousands and thousands of dollars.

Let me make it clear that in this instance, I am not being critical of the DOD or its programs or its motives. With 170 shipping installations and an obligation to the public to spend its resources correctly, the issue is not whether it should act in what it conceives to be its best interests and so also with the large corporate enterprise which is convinced of its manifest destiny to exercise absolute control or ownership of all it touches in behalf of its stockholders.

The real issue, if I may suggest it, is whether the decisions increasingly made by the large users, Government and private enterprise, ought not to be continued as the responsibility of an independent, efficacious agency of the Congress which is capable and competent to enforce specifically delegated authority in the overall public interest including, of course, the interest of shippers, carriers, and the consuming public.

There is a real need for the Congress to focus on the specific needs of small carriers including the need for collective ratemaking which has been mentioned by others and protection from pricing practices by large users and competitors.

In closing, Mr. Chairman, I hope that I have represented the views of the M&WAA membership adequately, and of course, they are more fully covered in the statement which you have.

And I want to add, sir, that my advanced status does permit me, I believe, to speak out from a vantage point other than self-interest. I am concerned about the long-term effects of abandonment of an independent agency exercising a civilizing and leveling effect in the provision of transportation available and affordable to everybody.

Thank you. And if you have questions, I will try to answer them.

Mr. SUNIA. Thank you, Mr. McBrayer. We just have one question. In your statement, you refer to legislation reported by the Judiciary Committee. Could you please give us a specific reference to that legislation?

Mr. McBRAYER. Yes. In the 1960's three times the moving industry and others came before the Congress and pointed to tax burdens which were inappropriate and three times the House passed legislation that would have brought about improvement in those areas.

Unfortunately, that legislation was not implemented by means of passage in the Senate. As was mentioned by the American Movers Conference, those problems are there. They are real, and they do need attention.

Mr. SUNIA. Thank you. We all appreciate your coming this afternoon.

We will now have the Mayflower Warehousemen's Association. Mr. Sibila, welcome to the committee.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF RONALD R. SIBILA, 1979 PRESIDENT, MAYFLOWER WAREHOUSEMEN'S ASSOCIATION

INTRODUCTION

My name is Ronald R. Sibila, 1979 President of the Mayflower Warehousemen's Association. I am also the owner of three local moving companies located in Massillon and Canton, Ohio and Parkersburg, West Virginia, all of which are agents for the Aero Mayflower Transit Company.

The Mayflower Warehousemen's Association (hereinafter referred to as "MWA") is an Indian Not-for-Profit Corporation originally chartered by the State of Indiana on February 6, 1935. Its prinicipal and only office is located at 9247 North Meridian Street, Suite 120, Indianapolis, Indiana 46260. Membership in MWA consists exclusively of the agents of the Aero Mayflower Transit Company, Inc. (hereinafter referred to as "Transit Company"), MWA is a voluntary association, i.e., all agents electing to become a member in MWA do so on a voluntary basis. Termination of membership in MWA is also by voluntary action on the part of the individual member, or only for cause by MWA.

It is important to the submission herein that this Subcommittee know the general overall background and facts of the member-agents who compose this association.

(a) Each member-agent is an independent businessman, acting as an agent for the Transit Company;

(b) In 1982, the member-agents generated "dollar volume" in sales in excess of $200,000,000 (Two hundred million dollars);

(c) Member-agents are small businesses, mostly family owned, who represent the Transit Company in every state of the United States and in foreign countries, and in every major metropolitan city of the United States;

(d) Member-agents own most of the equipment and provide a majority of the labor necessary to serve the shipping public;

(e) Member-agents must depend upon their "moving business' and its corresponding regulations for their livelihood and their destiny.

Therefore, our member-agents do have a great interest in, and concern with, the Interstate Commerce Commission's (hereinafter referred to as "Commission" or "ICC") implementation of the Household Goods Transportation Act of 1980 and these Congressional Oversight Hearings.

The purposes and objectives of MWA as set forth in part of its Bylaws include:

"To act, suggest, and assist on behalf of its members concerning . . . rules and regulations . . . before State and Federal agencies; that will be in the best interest of the agent-member, and the industry as a whole. . . ."

Therefore, MWA has the Corporate authority to submit this written Statement on behalf of its members.

A number of MWA's members have a "dual" interest in these Oversight Hearings before this Subcommittee and the final Rules adopted by the Commission in that (a) they are providing interstate hauling for the Transit Company and (b) many have ICC authority in their own name and stead.

The Rules adopted by the Commission "greatly affect" each and every agent-member of MWA. They are the individuals and companies who "actually perform" a great deal of the moving services rendered to the public and are therefore, seriously affected by the outcome of these Rules and the implementation of the Act.

Additionally, the member-agents can be and are assessed for fines and penalties resulting from non-compliance with technical violations of the Rules of the Commission. Therefore, it is vitally important this Subcommittee recognize and understand the final Rules adopted by the Interstate Commerce Commission must also be reasonable and applicable to the agent.

When the Household Goods Transportation Act was passed in 1980, Congress recognized the distinct structure within the household goods moving and storage industry. It was acknowledged in this Act that our industry was comprised of three integral components:

1. Van Lines;
2. Agents who may or may not be carriers; and
3. Owner-operators who are in the service of agents or van lines.

For three years now, MWA has presented both oral and written testimony at all Senate and House Oversight Hearings. We have repeatedly reminded this committee of the integral relationship and dependency each of these three components have developed for one another through fifty years of regulation. MWA believes there has been little regard for the comments and forewarnings previously made before this Committee relating to the financial solvency of agents and owner-operators.

This committee has been charged with the responsibility of overseeing the Interstate Commerce Commission's administration of this Act. It is very apparent to MWA that this Committee and the ICC have little concern towards the agency system and the owner-operators and continue to believe our industry is made up solely of carriers. This is emphatically wrong, as the agent and owner-operator components are just as vital and necessary as the carrier is to our industry.

Without a doubt, the number one problem facing agents and owner-operators today is volume discounting. Since 1980, large volume shippers have been able to demand and extract considerable rate concessions from the industry.

MWA would like to point out to this committee that volume discounting is more critical to an agent or owner-operator than to its van line. Van lines are generally more concerned with overhead expenses whereas the profits and losses of agents and owner-operators are more closely tied to operating costs. Most van lines can continue to cover their overhead expenses by offsetting reduced rates with increased volume. However, agents and owner-operators who have a tremendous investment in equipment and labor, will continue to incur the same operating expenses for any given shipment regardless of whether or not it moves at regular or volume discounted rates. With so many fixed operating costs, these small businessmen cannot continue to discount shipments by twenty percent or more, when there is not twenty percent profit available.

MWA believes that volume discounted rates are not only discriminatory to the individual shipper, but are quite often agreed to between the van line and the national account with the agent and/or owner-operator having no say or control over the final discount. As an example, a van line or one of its agents may offer a discount to a large shipper based in the Chicago area. Should an employee of this national account be transferred from Waterloo, Iowa to Clearwater, Florida, then all agents and owner-operators participating in that shipment would be required to serve that shipper at those reduced rates. So many times this creates undue problems, not only from a bookkeeping standpoint but also on the bottom line as far as profit is concerned. This continued practice may offer "short-sighted" bargains to national accounts but it will most certainly lead to a long term destructive impact on the agency system and the owner-operators.

Over the last three years, MWA has seen and heard testimonies from the ICC indicating the majority of carriers have increased profits. MWA disagrees with this assessment, because upon examination of the operating ratios for the top 15 household goods carriers, as reported by the Household Goods Carriers Bureau, it clearly indicates the average operating ratios for 1980, 1981 and 1982 were 97.7 97.5 and 97.4 percent respectively. Furthermore, these figures do not reflect or have any bearing on the operating ratios or financial solvency of the agents or owner-operators.

The consumer groups have also praised the Act and continue to press Congress and the Administration for further deregulation of the entire motor carrier industry. They have noted in their past testimonies the number of complaints had decreased considerably and that the industry had substantially improved its on-time pickup and delivery of shipments. MWA agrees the statistics of the industry's timeliness have improved. However, the main reason is because of the overcapacity of equipment coupled with the decrease in available tonnage. The number of complaints have reduced not as a result of deregulation, but because of the national economic climate.

This Committee and the Congress have been alerted every year by a variety of industry groups of the potential effects deregulation could have upon small communities. It is still our belief that this is just the tip of the iceberg, and will lead to many of the problems confronting the airline industry today. Drawing an analogy to the household goods moving and storage industry, van lines will continue to maintain their market share over the heavy tonnage routes. The long term effect for the off-line points will be a deterioration of service and eventual disappearance of agents in those towns and communities.

MWA also projects there will evolve a number of van lines who will operate over these major transcontinental routes resulting in an environmental impact that will threaten the survival of many communities across this Nation.

MWA has consistently pointed out these concerns in all previous pleadings and testimony, without response, confirmation or recognition of the problems confronting the agents and owner-operators in our industry. It is time this committee sees fit to examine the financial hardships being borne by the small businessmen/agents and the owner-operators.

All MWA members are small, independent businessmen/agents who take pride in being one of the three integral components of this Nation's household goods moving and storage industry. We urgently request this committee begin an immediate investigation of the irreparable effects deregulation and volume discounts are now having on the agents and owner-operators in our industry. We are vitally concerned with the issues addressed herein, and request this committee take immediate steps to investigate our sincere concerns without further delay.

Mr. SUNIA. Please proceed.

TESTIMONY OF RONALD R. SIBILA, FORMER PRESIDENT, MAYFLOWER WAREHOUSEMEN'S ASSOCIATION, ACCOMPANIED BY DONALD B. HAMILTON, PRESIDENT

Mr. SIBILA. Thank you, Mr. Chairman. I have with me Mr. Hamilton, who is the current president of the Mayflower Warehousemen's Association. I am a past president.

I think it is important for this committee to understand really who we are and what we represent. I am the president of People's Cartage, Inc., a diversified transportation company. We offer services in trucking, warehousing as well as the transportation of household goods and in that capacity, we have and act as agents for the Aero Mayflower Transit Co. in Canton, Ohio, Massillon, Ohio, Parkersburg, W. Va., and Charleston, W. Va.

The Mayflower Warehousemen's Association is made up of over 600 members such as myself and Mr. Hamilton across the country.

All of us are small business people. Many of us are family owned. In fact, we are on our second and third generation of management.

We are the people who think of ourselves as sort of the nuts and bolts of the industry. We own most of the equipment, the warehouses, the offices, and furnish the labor the household goods movements.

So we do have a vital interest in these hearings and we have submitted testimony in the past; both oral and written.

In a typical household move, it is usually made up of the carrier, the agent and the hauler. In many cases, we also provide the hauling equipment. We would like to bring to the attention of this committee two areas that we are vitally concerned with.

The first area is that it appears to us that regardless of our wishes and our past testimony that the ICC and the Department of Transportation is hell bent on total deregulation. But we find ourselves still regulated and I brought with me today just a sample of the type of brochures and administrative paperwork that we are required to complete on a typical household goods move. In this area, we have had hardly any relief.

Another area where we haven't had any relief it seems to me is crossing State lines and the taxation issues. We are being hit by third structure taxes in just about every State today. It's almost impossible to keep up with the filings and the administrative requirements in order to operate.

Another area where we are vitally concerned is in the area of predatory pricing and the volume discounting that is taking place in our industry, and as agents, we have sometimes little or absolutely no control over this discounting, and some of this discounting is going as high as 20 and 30 percent.

And I submit, Mr. Chairman, that there is not anyone in this industry that has ever made a profit of 20 to 30 percent. But this is what is going on.

Now, we are the ones, as I mentioned earlier, providing most of this equipment. The price of equipment has not decreased. Labor has not decreased. Parts have not decreased. Fuel has been up and down. Thank God it has finally stabilized a little. And yet we are committed and must absorb some of these exorbitant pricing discounts and volume discounts.

And if something is not done soon, I submit we are going to have a revolt on our hands at these truck stops, particularly by the owner operators, and if this committee is really interested, maybe you ought to set up a meeting at some truck stop. Just make sure you take along some protection.

Something needs to be done soon. But we do thank this committee for giving us the opportunity to be heard.

Mr. **Sunia**. Thank you, Mr. Sibila. I hope the protection will not be for us but for ICC. [Laughter.]

Mr. **Sibila**. I hope so, too.

Mr. **Sunia**. Congressman Shaw?

Mr. **Shaw**. Thank you. I missed the first part of the gentleman's statement, out the urgency of his message did come through. I look forward to reading your prepared statement. I have no questions at this time.

Mr. SUNIA. I just have one brief one. What specific legislative action can Congress take to correct the problems stemming from volume discounts? Can you briefly give us an idea?

Mr. SIBILA. Well, there are enough statutes on the books. I think it is just a question of convincing the Interstate Commerce Commission to do their duty and to uphold the law that is already there and not to allow this type of volume discounting by the carriers.

Mr. SUNIA. Yes, I thought you meant ICC needs the protection, not us.

Thank you very much, Mr. Sibila. I have no further questions. Did Mr. Hamilton have something?

Mr. HAMILTON. No, thank you.

Mr. SUNIA. The next panel will be from the National Moving and Storage Association. Dr. Ruane, Mr. McShane and Mr. New. Gentlemen, welcome to the committee. I know you have been waiting patiently, and I want to commend you for that.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF THE NATIONAL MOVING AND STORAGE ASSOCIATION

BACKGROUND

The National Moving & Storage Association is a non-profit trade association organized and existing under the General Not-for-Profit Corporation Act of the State of Virginia. Its offices are located at 124 South Royal Street, Alexandria, Virginia 22314.

NMSA has been in existence since 1920. It is the oldest national trade association in the household goods moving and storage industry. The Association's membership is comprised of some 1400 local and international movers, agents and warehousemen located throughout the United States and 56 other countries. The majority of the Association's U.S. membership are agents of the large national van lines. However, many NMSA members have individual ICC operating authority in their own right which provides them the freedom to offer transportation services to shippers without having to function exclusively under their van line's operating authority. For the most part, NMSA's members are relatively small moving and storage companies. Approximately 80 percent of NMSA's members earn $1,500,000 or less. Nearly half of the membership, about 43 percent earns $500,000 annually. The Association's membership can be accurately characterized as representative of the small business segment of the household goods industry.

PRESENT BUSINESS CLIMATE

While the present business climate of the household goods industry appears to be improving, the small business owner—the agent—continues to experience difficulty from the lingering effects of the economic recession and the regulatory confusion which still exists. Viewed just from the perspective of the largest national carriers, volume is up, and operating revenues have increased during the past six months. However, the agent and the owner-operator are bearing the burden of overcapacity in the marketplace, fighting the price wars, and dealing with the overzealous regulatory policy of the Department of Defense.

Since the enactment of the Motor Carrier Act and the Household Goods Transportation Act, many carriers have offered an expanding array of price and service options to shippers. One of the serious disadvantages of the new pricing practices is the widespread use of volume discounts. This practice discriminates against COD customers in favor of large national accounts and is adversely affecting the financial well-being of the small mover and the owner-operator.

NMSA has always embraced the goals of the Houshold Goods Transportation Act and prefers further deregulation rather than be operationally-hamstrung by various proposals of government "re-regulation." Legitimate questions have arisen about the future role of the Interstate Commerce Commission, and about the possibility of the consumer protection regualations governing this industry being transferred from the ICC to the Federal Trade Commission (FTC). NMSA poses the question, if the motor carrier industry is going to be further deregulated, then why is it necessary for the household goods industry to be subjected to a separate set of rules, when it is already governed by the Sherman Antitrust Act and the Federal Trade Commission Act as every other business?

Finally, NMSA questions why the Military Traffic Management Command (MTMC) of DOD continues to blatantly disregard one of the major goals of the Household Goods Transportation Act—to reduce the paperwork burden. More importantly, at the very time when there appears to be a reviewed deregulatory thrust on Capitol Hill and from the Administration, why is the MTMC quickly filling in the gaps with new rules, regulations and rate programs?

This is government regulatory confusion and inconsistency at its worst.

UNCERTAINTY OF FUTURE REGULATION

Earlier this year, the Department of Transportation (DOT) floated a broad-sweeping proposal to completely deregulate the surface transportation industries. Under DOT's draft legislation, household goods carriers are not treated separately as they are in the Household Goods Transportation Act, but instead are lumped with general commodities carriers. The Interstate Commerce Commission would also be dismantled, thus leaving a gray area concerning the consumer protection regulations governing this industry. According to the DOT plan, these consumer regulations would be transferred from the ICC to the FTC. NMSA is unalterably opposed to the transfer of the 49 CFR 1056 rules to the FTC, believing a review of the current rules might inspire additional regulations unnecessarily. On the whole, NMSA members believe that the household goods moving and storage industry's performance does not warrant separate FTC regulations no matter what the outcome of further deregulation. However, if Congress deems it necessary to retain a consumer oversight function, then NMSA advocates that those regulations stay with the Interstate Commerce Commission or its residual transportation entity and not be transferred to another agency. Moreover, there is always the concern that the states will impose additional, unnecessary consumer protection laws.

Complete deregulation, as advocated by the Department of Transportation, may adversely affect the existing structure of the moving and storage industry. Elimination of all antitrust immunity for collective ratemaking will have a serious impact on daily communications and rate setting. The van lines typically provide the operations coordination, whereas the agents actually sell and perform the services. Communication between the van line and the agents is a fundamental part of the industry's efficient networking. Absent antitrust immunity, agents will be forced into either a broker role or that of an exclusive "franchise" operator. The present integrated transportation system would obviously suffer. NMSA is particularly concerned about the ability of van lines to discuss rate matters with their own agents who also happen to have their own operating authority.

The lack of any clear direction on the future role of the ICC is of great concern to the industry. Given the yearly budget cuts of the Commission, its lack of effective enforcement capability, and its "hands off" approach to problems like volume discounting and operating authority issues many question the purpose of the ICC. If the ICC is "terminally ill" then a life-expectancy should be announced!

The industry is suffering from the government's confusion on this matter. The current market environment of the household goods industry is marked by uncertainty, economic fluctuations and severe price competition. Companies cannot realistically plan ahead. Consequently, it became imperative for NMSA to take the initiative and provide some guidance for its membership on how to deal with the transition to a possibly, totally deregulated environment. In June of this year NMSA's Executive Committee approved the formation of a blue-ribbon panel of industry leaders to study the impact of total deregulation on the moving and storage industry. The purpose of the "task force" is to develop programs, guidance and educational materials to assist the NMSA's membership and the industry in their transition to an environment in which they may be operating without federal regulation. After thorough analysis of the problems affecting this industry, the NMSA "Task Force on the Future" may have a legislative recommendation that would facilitate these changes.

The Task Force met initially in September, and is currently seeking input from the industry through a survey and will meet again to analyze this input and listen to member concerns on December 13. The "Task Force" is particularly interested in developing new education and training programs for the household goods industry and would benefit greatly from clear policy signals from the Congress about future regulatory actions. The nation's household goods industry is a unique industry, duly recognized with the Household Goods Transportation Act. Both consumers and the industry would benefit from a timely analysis and resolution of the various deregulatory/re-regulatory proposals both in the Congress and the Administration.

DOD MUST REDUCE REGULATIONS

The Household Goods Transportation Act is partly designed to reduce unnecessary paperwork in the daily administration of moving services. To their discredit, Department of Defense agencies have not attempted to minimize the regulatory load placed on household goods movers, it has only increased the burden. Even worse, the Military Traffic Management Command (MTMC) is quickly filling in the voids where deregulation has occurred. Instead of accepting regulatory reform, MTMC finds it necessary to institute its own regulations and rate programs to supposedly maintain tight control over this industry.

A specific problem of excessive paperwork is the DPM (Direct Procurement Method) contract imposed by the United States Air Force. This pack-and-create contractor program not only has voluminous requirements for carriers to follow, but a complicated quality control program which imposes dollar penalties. Our members, who contract with the Air Force, believe that if this quality assurance program is indiscriminately administered, enough penalties could be imposed on carriers to effectively drive down the price.

More recently, MTMC on short notice told the industry of its intent to implement a new Interstate Rate Solicitation program. Noting that motor carriers will probably lose single-line antitrust immunity for collective ratemaking activities next July, MTMC seized the opportunity to impose its own layer of new regulations. This is typical of MTMC's entire behavior pattern in this area.

The primary reason given for the rate solicitation program, according to MTMC, is the need to effectively control and manage interstate shipments of household goods by issuing its own rates. In effect, the military, which is the customer, is telling the industry what it will pay for services, before the extent of the services have been determined. The MTMC reserves the right to reject rates and ask for new ones at will. Such an approach smacks of price-fixing, which MTMC is supposedly opposed to.

In July, the Small Business Administration held hearings on the Paperwork Reduction Act. Jack Macey of Macey Movers, Inc., who is the Chairman of NMSA's Military Affairs Committee, testified at the hearing held in San Francisco on the tremendous paperwork problems associated with military contracting. It is a perfect illustration of the problems household goods carriers are facing with Department of Defense agencies.

The transcript of Mr. Macey's testimony is attached with NMSA's statement for the Committee's review. We encourage the Committee to carefully scrutinize his statement.

Furthermore, NMSA formally requests that this Committee launch a full scale investigation by the General Accounting Office of the Military Traffic Management Command's overall activities in relation to household goods carriers, including but not limited to the new Interstate Rate Acquisition Program.

RELATED ISSUES

Outside the Household Goods Transportation Act, many legislative initiatives have a direct impact upon household goods carriers and agents.

DIESEL DIFFERENTIAL

One such action is the heavy-vehicle users tax incorporated in Title V of the Surface Transportations Assistance Act of 1983 (STAA).

When the Highway Revenue Act (Title V) was still in its formative stages, NMSA endorsed the five cent per gallon fuel tax increase, but opposed the heavy vehicle use taxes as excessive and unfair. Although the taxation scheme was modified slightly, it will still have an adverse impact on many small movers.

The inequity of that method of taxation led NMSA to join the "Coalition for Fair Truck Taxation." The coalition is supporting H.R. 2124, a bill which establishes an additional five cent per gallon excise tax on diesel fuel used by trucks weighing over 10,000 pounds (gvw). This approach is more equitable and efficient than the original heavy-vehicle use tax. To date, there are 196 co-sponsors of H.R. 2124, the counterpart legislation in the Senate S. 1476 has 23 co-sponsors. NMSA urges Congress to repeal the heavy user tax provisions of the STAA and enact the fairest compromise—the "diesel differential."

MULTI-EMPLOYER PENSION PLAN PROBLEMS

The withdrawal liability provisions of the Multi-Employer Pension Plan Amendment Act (Title IV of ERISA) remain one of the most difficult problems facing moving and storage company employers. After the enactment of MEPPA, many of NMSA's members believed that their pension liability was limited to contractual obligations. But they soon found that under the new law they were also saddled with the unfunded vested liabilities of the multi-employer pension fund to which they contribute.

Our members have found that their flexibility in making fundamental business decisions have been significantly thwarted by the withdrawal liability provisions of MEPPA. Routine transactions such as sales, acquisition, mergers, purchases, or business closings, can cause employers to suddenly be responsible for their pro rate share of the unfunded vested liability in their pension fund.

NMSA calls the Committee's attention to the pension plan problems because it represents a major stumbling block to a healthy competitive industry. NMSA recently surveyed its members on this issue, the results confirmed the seriousness of the onerous liability problem. Our members are in strong support of a legialative remedy, as soon as possible.

USE OF OPERATING AUTHORITY

Both the Household Goods Transportation Act (HGTA) and the Motor Carrier Act stress competition and reduced regulation as ways of achieving more effective motor carrier transportation services. As part of this effort, the agent's flexibility to utilize their own operating authority was greatly enhanced when the operational regulations governing the household goods industry were revised to conform to the HGTA.

Unfortunately, some agents who enthusiastically obtained their own ICC operating authority after the enactment of the Motor Carrier Act and the Household Goods Transportation Act, were subsequently unable to use the new operating rights because of overcapacity and restrictions imposed by their van lines. Some of the large national van lines are instituting policies requiring any carrier currently affiliated with it as an agent to either dedicate its own established name exclusively to the van line and abandon its own authority, terminate its affiliation, or establish a separate subsidiary to operate as an independent carrier.

A General Accounting Office Report to the Congress on the "Household Goods Moving Industry: Changes Since Passage of Regulatory Reform Legislation" published in June clearly outlined this problem. The GAO noted that, "In many ways, a van line placed implied or expressly stated pressure on its agents to either limit or totally prevent the use of their own operating authority."

NMSA believes this adverse development is an unintended effect of the regulatory reform laws. Such restrictions by the van lines may not be illegal, but NMSA believes these actions are inconsistent with the goals and policies underlying the Household Goods Transportation Act. NMSA would appreciate the Committee's continued attention to this matter and clarification of Congress' intent.

ANTITRUST IMMUNITY FOR INTRASTATE COLLECTIVE RATEMAKING

For many years states have permitted motor carrier rate bureaus to engage in collective ratemaking activities. However, in a number of recent cases, the courts and the Federal Trade Commission have ruled that rate bureaus are not exempt from the federal antitrust laws because their intrastate activities are not "compelled" by the state in which they operate. For example, in *United States* v. *Southern Motor Carriers Rate Conference*, 79-3741 (Fifth Circuit, Unit B, 4-11-83) the Fifth Circuit held that the collective ratemaking activities of the Southern Motor Carrier Rate Conference, the Motor Carriers Traffic Association and the North Carolina Motor Carriers Association (representing common carriers in the states of Alabama, Georgia, Mississippi, North Carolina, and Tennessee) amounted to a *per se* violation of Section 1 of the Sherman Antitrust Act.

Additionally, the Antitrust Division of the Department of Justice is currently investigating the activities of traditionally—exempt rate bureaus throughout the U.S. In response to both the recent administrative and judicial decisions and the Department of Justice's increased activity in this area, a number of states have enacted legislation to protect the antitrust immunity of motor carrier rate bureaus in their respective states. On a national level, there is a bill, H.R. 3735, sponsored by Representative Sam B. Hall (D, TX), which exempts intrastate collective ratemaking activities from the federal antirust laws. This legislation is pending before the House Subcommittee on Monopolies and Commercial Law.

The National Council of Moving Associations (NCMA), is a coalition of state associations representing the moving and storage industry. Since 1969 this NMSA affiliate has attempted to collectively represent the views of states before the federal government. The NCMA supports the efforts of Representative Hall and the state legislatures. Given the traditional tolerance of states for collective ratemaking activities, this new emphasis on antitrust scrutiny is misplaced. Forcing state motor carrier and moving associations to vindicate their rights in costly lawsuits, can only contribute to a worsened financial condition in the industry.

In behalf of NCMA, NMSA requests that this committee review Congressman Hall's bill (H.R. 3735) and individual members join in co-sponsoring the proposal and urge early Congressional hearings and action.

CONCLUSION

The Household Goods Transportation Act is a fair and well-balanced law. These annual oversight hearings, which probe into the real-word effectiveness of the legislation, provide an important opportunity for household goods carriers to give the Committee their candid appraisals of how the Act is being implemented.

NMSA requests the Committee's careful consideration of the concerns which have been highlighted. Some clear policy direction is needed from Congress on the future role of the Interstate Commerce Commission, as well as some clarification of the current regulatory confusion which exists throughout the federal agencies. Moreover, NMSA urges this Committee to initiate a thorough GAO investigation of the Military Traffic Management Command's overall practices and the new Interstate Rate Acquisition Program.

EXHIBIT A

TESTIMONY OF JACK MACEY OF MACEY MOVERS, INC., BERKELEY, CALIF.

The following is a transcript of the testimony of Mr. Macey and questions posed by the Chairman of the hearing, Frank S. Swain Chief Counsel for Advocacy of the Small Business Administration.

Jack Macey, President of Macey Movers, Inc. is introduced by the Chairman, Frank Swain.

MACEY. I am representing the National Moving and Storage Association. It will take me five minutes to get my paperwork out. One of the agencies the moving and storage industry in the U.S. does business with is the Department of Defense (DOD) through their Military Traffic Management Command. I've only been able to bring a certain amount of documentation and paperwork that is used with a carrier of household goods in a relationship with DOD. They start with their first regulation—DOD 450034R—its Personal Property Management regulations. Then, if I have it in the right order by year, we go from change 1 up to change number 23. These are some of the regulations that tell us how to conduct our business when dealing with the Department of Defense and the relocation of a military member. Then we have a rate filing system. These are the instructions for filing domestic manual uniform tenders of service, rates and/or charges for personal property shipments.

CHAIRMAN. That tells you how to go about filing your papers?

MACEY. Yes. Then we have a separate set of instructions for interstate—from one state to another. Then we have a separate set of filing regulations, instructions for filing intrastate—tenders of rates and/or charges for the personal property shipments. Then for storing these types of goods we have the basic ordering agreement. Now, the basic ordering agreement is not that voluminous but they were not able to explain it. So then, larger than that is the handbook that explains the basic ordering agreement and how to function.

CHAIRMAN. Let the record reflect it's about five inches of 8½ x 11 inch paper there.

MACEY. Then to locate shipments within a storage area, which is part of the basic ordering agreement, the Department of Defense personal property storage handbook is not too many pages but just to locate goods within the warehouse (as though the warehouseman intended to lose goods in the first place.)

CHAIRMAN. That's within your warehouse, I assume.

MACEY. Within any one contractor's warehouse.

CHAIRMAN. Not within a government warehouse?

Macey. No.

Chairman. They find it necessary to write a manual for you to tell you how to locate goods within your warehouse or anybody else's warehouse?

Macey. Yes. And if you'll notice the thickness of the briefcase—it can only carry this much—we have now about 27 letters that are in the mail or on desks now just for relocking warehouse doors since the first of 1983. Whether they should be certain type locks—certain size locks—

Chairman. On your own warehouses?

Macey. On each contractor's individual warehouse.

Chairman. Why don't they just say: if you lose the goods, or you damage them, you have to pay a fine and you can't do business with us for, say, 60 days.

Macey. Those are all in here, but on top of that they want these other requirements.

Chairman. So they not only have a penalty but they have a design of how you have to go from A to B to C, D, E all along the way.

Macey. A claims settlement is very finely designed through a claims manual which I did not bring.

Chairman. Well I guess that my broad question is—by the way, how many employees do you have?

Macey. Operating within the State of California, about 25. And 5 owner-operators which cross the nation on interstate service.

Chairman. Do you think if DOD threw out all those books and just had the book that had the clams settlement procedure and the penalty procedure you could still move the stuff as efficiently as I presume you are now?

Macey. You asked the question and I am prepared to answer it. In our civilian industry we are fortunate enough to have clients who have given me permission to use their names today and leave their letters of authorizations with which they handle a move. Foremost Diaries, Inc. have a one-page, two-paragraph letter that gives us the responsibility and authorization to accomplish a move of one of their employees anywhere they have offices, which could be intrastate, interstate or abroad, and this accomplishes what I think these may attempt to. Also, Crown Zellerback Corporation has the same type of authorization approach—just somewhat lengthier.

Now, we realize we're responsible to make the military member confortable in his or her move, so that induces their recruitment or additional term of service. But, if we move an executive of the Crown Zellerback Company and if we fail in any of our responsibilities they have their own means for not choosing that carrier for future use. These letters also would include storage if it need be—where we have separate books for storage here. And I want to be a little facetious right now, but this is a blank piece of paper and that's what we use when we deal with Montgomery Ward Corp. They deal totally by phone orders, for moves up to $20,000, and they find their moves successful. If a person doesn't satisfy their moving requirements, they no longer do business with Montgomery Ward. Honestly, as a sales person, to gain an account is one thing; to lose it and try to get it back is near impossible. From the Varian Corporation, Clorox, and Shell Oil—I have only one or two-page purchase orders, letters of authorization, or letters of responsibility.

My question is—does the Department of Defense—and I skipped one of their so-called trans-logs—that's an update on what they forgot to file on one of their change orders so that's an additional amendment to their addendum. It seems to me, that if an individual could handle their own moves, paid for by the US Government, DOD, any civilian agency of the government or by a corporation or by themselves, we have an organization that will protect the well-being of that individual. We have the Interstate Commerce Commisson for moves within the US, but outside of any one state. It's very concise, it tells us how to file a claim, and how to register any dissatisfaction with the Interstate Commerce Commission. We are also responsible for submitting to the ICC the Annual Carriers Performance Report. That seems to do the job quite well, with a majority of the moves handled.

Within the State of California a somewhat similar booklet outlines the important information for shippers of household goods within California—everything they have to know and who is responsible for what. If there is an impasse between the carrier and the customer, then it gives information on how to contact the State Public Utilities Commission for assistance or arbitration. These are very simple documents.

Mr. Chairman, I represent the National Moving and Storage Association as their chairman of the Military Affairs Committee. I also represent the California Moving and Storage Association in the same capacity. I'm very familiar with the OCP-100 Your Rights and Responsibilities When You Move, I've studied it, I've worked night and day, and I question if the average mover in the United States knows all of these things—what their responsibilities and their rights are. I will read this document to you, but I don't think this committee is ready for that much time.

Chairman. I don't now if we have that much tape even if we had that much time.

Macey. Very good. I attempt to be knowledgable of military traffic management through the Military Traffic Management Command. I know that is a big program. They spend billions of dollars in relocating military members in the United States and the European and Pacific theatre. But, I question that what it costs to manage that program might be equal to the moving costs that movers submit invoices for. I brought with me our figures that show what our gross sales are for the military in relation to our total sales. For example, a COD, that's a private shipper that picks their own mover, pays their own bill, was 12 percent of our business. Special products, electronics, trade shows and exhibits and high value commodities were 13 percent. National accounts—the type of orders I brought here—is 70 percent, and government is four percent of our gross volume in interstate sales for one year. So for four percent of volume * * *

Chairman. These are 96 percent of your paperwork?

Macey. That's right. So I hope I've explained that I think there's a little bit more paperwork than what it's truly intended to accomplish.

Chairman. I think you have explained that quite well. The record will reflect that the paperwork represents the DOD specifications seems to—how many pages would you say were there in all those books? 600—700—800.

Macey. Oh no. Near 1,000.

Chairman. And you've got basically one-page authorization letters from your major corporation clients.

Macey. Yes.

Chairman. Let me switch to a slightly different thing. How many years have you been in the moving business?

Macey. Give my age away?

Chairman. No.

Macey. Most of my life.

Chairman. The Congress in 1980 passed a Household Goods Transportation Act. Has that worked relatively well?

Macey. We're not certain. I was at a meeting in Evansville, Indiana, last Wednesday and the plight of the industry is unknown at this time. The financial condition of some in the industry is very precarious and we just don't know where we are going. We may become our worst enemy. I'm not against the deregulation act but I'm not sure our industry was ready for it with the poor economy at the time and the financial condition of the carriers in general.

Chairman. Yes. They are very important factors. Let me ask you about a factor which may not have been the one uppermost in people's minds but did that result in any less paperwork on household goods moving?

Macey. We were able to gain from the Interstate Commerce Commission a 9 x 12 bill of lading that went to 9 x 15, so we're pleased with that. No reduction—one document we were relieved of and that is the driver's weight certificate. To our knowledge that is the only one document that has been reduced.

Chairman. Do your drivers fall into the driver's log requirements for the Department of Transportation?

Macey. Yes.

Chairman. Has there been some reduction there?

Macey. Only in the portion that applies to the number of hours over 70. I think it's intended to make for safe operation but I think it's gone beyond that. An average individual could not complete this log driving their own automobile from, say, San Francisco to Los Angeles. Now the parts about safe tires, windshield wipers, etc. I think those things are fine. But the on duty—not driving—on duty equipment preparation, times of fuel, is that on duty driving or on duty not driving? The DOT log form is very difficult

Chairman. You think further work can be done on that?

Macey. Yes, they can be abbreviated and still consider safety.

Chairman. You've laid out very graphically what the problem seems to be. Does the Department of Defense show any interest in reducing or cutting out any of its regulations?

Macey. No, probably adding. See the Department of Defense has this arm called the Military Traffic Management Command which can make no decisions unless they are sanctioned by the individual services and unless they have the concurrence of all the services they cannot implement anything through that department.

CHAIRMAN. Even if the Air Force is willing to deregulate they'd have to get the Army the Navy and Marines to go along with them?

MACEY. No, they can do their individual things, other than these. The Air Force has a Project Reval—I forget how many pages that is—and how the responsibility of the carrier dollarwise to claim settlement. Each of the services—and I might add, if the carrier is expected to know this, what is the Military Traffic Management Command records to back these up?

CHAIRMAN. As we heard this morning, the whole issue of federal procurement is exceedingly complicated.

MACEY. Another area I am not conversant in, but which poses problems, is the DPM (Direct Procurement Method) which is contract that the services at different installations have with the commercial carrier. I understand that is one of the most rigorous, difficult contracts to interpret. In fact, carriers have gone to contracting officers who are attorneys and can't get sensible answers. Then we have the CERS program (Carrier Evaluation Reporting System). If I had time I would have to bring my whole office here to explain it. Some day we will move a household of goods that will weigh *x* number of pounds and the documents that will accompany that may outweighg the shipment of household goods. We're getting close to it.

CHAIRMAN. I appreciate your coming over today, Mr. Macey.

Mr. SUNIA. Please proceed.

TESTIMONY OF DR. T. PETER RUANE, PRESIDENT, CREIGHTON McSHANE, CHAIRMAN OF THE BOARD, AND J. PARKER NEW, SR., MEMBER, MILITARY AFFAIRS COMMITTEE, NATIONAL MOVING & STORAGE ASSOCIATION

Dr. RUANE. Mr. Chairman, I am Pete Ruane, president of the National Moving & Storage Association. On my right is Creighton McShane, president of McShane Moving & Storage in Great Neck, N.Y., and our chairman of the board. To my left is Mr. Parker New, NMSA member, who is president of New-Bell Storage Corp. in Norfolk, Va., and a member of our Military Affairs Committee.

What I would like to do this afternoon, Mr. Chairman and members of the committee, is just to review a few points that are in our statement, turn to Mr. McShane to make some comments on one section of the statement as well as Mr. New on a different section.

Again, we thank you for the opportunity to appear here this afternoon and review with this committee some of our observations and hopefully insights into the implementation of the act.

Most notably our statement dwells on the issue of the impact of the act on the small agent, the small business component of the household goods industry and notes that while the economy is improving and there is some evidence the industry is recovering from the recession, there is still considerable concern.

Like others who have testified this afternoon, and we would agree with all the statements made about the problems with the Department of Defense implementation of the act, we want to call special attention to an exhibit that has been submitted with our statement.

It is a transcript of testimony provided by our chairman of the Military Affairs Committee, Mr. Jack Macy of Berkeley, Calif., in a hearing in July in San Francisco that the Small Business Administration conducted on the Paperwork Reduction Act.

I think when committee members look at the illustrations and the commentary in that statement you will find graphic examples, compelling examples of the problems with the military traffic situation.

Third, and this will be commented on by Mr. New at some length, is our concern about the overall implementation and regulatory behavior of the Military Traffic Management Command and our call for a complete General Accounting Office review of the total program, not just some of the specific examples that are cited in our testimony.

Last, I want to call the committee's attention to some related issues that are covered in our statement, most notably some pending legislation that deals with some problems that also is affecting our industry, the first of which is the heavy tax burden the industry is faced with with the recent passage of the Surface Transportation Assistance Act.

Here I am speaking of proposals that are before the Congress regarding a relief of the taxes that were in that act, and I am speaking of the diesel differential proposal. It is known as H.R. 2124.

NMSA is going on record in support of that legislation, has joined a coalition of other associations who are moving to get passage of that legislation; and I must note that we are aware that some 28 members of the Public Works Committee are cosponsors of that legislation including 14 members of this particular subcommittee.

Second, we point out in our statement our concern with the Multi-Employer Pension Plan Amendments Act provisions. This is the impact they put on small businesses who are attempting to either sell their businesses or try to pass it on to their children. There is a liability problem here that is covered in our testimony.

Last, an issue that has been covered by other witnesses this afternoon is our concern regarding the antitrust immunity situation for our industry, most notably beyond the interstate questions which we do address but we specifically highlight our concern for the issue of intrastate ratemaking with the antitrust immunity for such, and we note our support for a bill that has been introduced. It is H.R. 3735, by Congressman Hall of Texas and would urge this committee to consider support of that particular legislation with your colleagues and other committees in the Congress.

Now, Mr. Chairman, I would like to turn it over to our chairman of the board, Mr. McShane.

Mr. McShane. Mr. Chairman, members of your committee, I am delighted to be here today, and I just have a few remarks to add. We are the people that move the household effects to the individuals, the homeowners, the people like yourselves when you go from an apartment or a home to someplace else.

So I commend Congress for setting up in 1980 the Household Goods Act which separates us from the motor freight business. We are moving the life possessions of people. We are entrusted with their household effects and valued items and should not be placed in the same category as people who are moving pure freight. We are sophisticated shippers.

Now, most recently we have seen that there seems to be a movement within the administration to further deregulate our industry, and first we would like to comment on the fact that, in our opinion, our association consisting of some 1,600 locations throughout the United States, that in fact, the Interstate Commerce Commission has not been fully living up to the provisions of the act as you have already heard today. I will leave it at that because others have touched on that. We strongly endorse that feeling that they have not, in fact, been following the letter of the law there.

Second, if there were to be further deregulation, it is leaving us without any real Government direction or understanding how we can look and perceive the future to be. It is difficult for us to plan in our small businesses how we are going to be operating in the future.

Our association, National Moving & Storage Association, poses the question that if the motor carrier industry is going to be further deregulated, then why is it necessary as has been proposed for the household goods industry to be subjected to separate sets of rules when it is already governed by the Sherman Antitrust Law and the Federal Trade Commission Act?

In short, any transfer of consumer interests, regulation or protection of the Federal Trade Commission, in our judgment, is unnecessary in view of the recent record of the industry in improving its services and the reduction of complaints to the Commission over the past 3 years.

Though we are very deeply concerned about how our industry will be operating in the future, and to highlight that, our organization, in fact, formed very recently what we call a blue ribbon task force of people from our industry both members and nonmembers of our association to look at and to allow us to help prepare for that future.

We are going through the throes of that now and will make as fine a determination and recommendation and counsel to our members as possible.

However, it would be helpful if we could see a clear path as dictated from your committee and Congress as to what the future of our industry ought to be and to that end, I think these oversight hearings hold importance to you and your committee.

Thank you very much for this opportunity.

Mr. NEW. Thank you, Mr. Chairman, for an opportunity and we have covered in our statement part of our problem with the Department of Defense, particularly the Military Traffic Management Command is the concern over their continual heaping of additional paperwork burden, apparently in our opinion, faster than we are disposing of it through acts of Congress or through the commissions that they have suggested.

I particularly want to call to your attention just within the last few weeks they have come up with an interstate rate acquisition program. This program very nearly is identical to that that they had about 2 years ago for intrastate rate acquisition.

Currently we have, through the efforts of some Congressmen, the General Accounting Office is investigating that procedure and we are a little surprised to find that they are going very nearly with the same program as the one that is being investigated.

This puts the Military Traffic Management Command in the position of being a regulator, a customer, a claimant, adjudicator and the final judge if they do not concur with the carrier or the warehouseman by offsetting income due from other operations.

Recently our committees have met with members of Military Traffic Management Command over their proposal for quality assurance surveillance plans with the DPM or the packing and crate contract for military personnel.

This was a proposal initiated by the Air Force, and though we had many meetings, most of our concerns fell on deaf ears. It is still in a testing stage but every indication is that they are going ahead. That is one of the most complicated programs that I have ever seen for a small businessman to understand. Someone who lives with Government regulations up here possibly could understand it better than the independent businessman in the field.

This interstate rate acquisition program brings on concerns about their long-range plans. For instance, several years ago they went on their storage program to a 5-year base rate program, making the contractor bid on his rates for storage and handling and delivery charges up to 5 years from the date the services begin, and in the marketplace today, our labor cost and the cost of operations are not predictable.

We have met with them many times. We still have not had that period shortened. Recently as a result of pressure from budgetary concerns, there has been a great drive on entitlement of servicemen for storage. They have found that many servicemen's entitlements have expired. They now just abandon the property to the warehousemen with no means of contractual obligation with the rightful owner and somewhat of a question as to how we should comply with the universal commercial code where there is no preceding contract with the owner of the property.

We are, therefore, very concerned. The National Moving & Storage Association formally wants to request that the Surface Transportation Subcommittee launch a full-scale GAO investigation not only of the interstate rate acquisition program but of the entire burdensome procedures placed on the moving industry by Military Traffic Management Command.

That is all I have to say.

Mr. ANDERSON. Dr. Ruane, is the industry benefitting from any productivity enhancement resulting from the size and weight provisions included in the Surface Transportation Assistance Act of 1982?

Dr. RUANE. I think obviously it is too early to tell but I think that some segments of the industry will benefit from the increased weight, a small segment of it will. The larger carriers clearly will.

Mr. ANDERSON. The larger carriers you say?

Dr. RUANE. I think so, yes, eventually when it is——

Mr. ANDERSON. Mr. McShane, is it possible that in the past larger shippers were subsidizing smaller shippers and is there any logic behind volume discounts? And if this is a problem, is it not only because some of your members are utilizing this practice to the detriment of other of your members?

Mr. MCSHANE. Well, if you are going to deal with free marketing, you are dealing with one type. When you are going to deal with half freedoms as we perceive them today within the framework of the regulation as it is being perceived by the Commission, that is another viewpoint.

In the past, you had to conform to strict regulations. The prices were the same for whether it be a corporate customer a national account or for an individual. Now, you are getting discounts in both areas to varying degrees.

It would be fair to observe that the largest corporate customers, in fact, is probably receiving a greater discount over a larger portion of his transfer than the individual but the individual is also benefitting to a degree in the discount program.

We do not feel, however, that it has been properly administered by the commission and that the range of the discounts and the methods of their supervision of contract cartage and related pricing has been in accordance with the act of 1980, and therefore, we quarrel with the way that they have been handling the administrative side of this.

Mr. ANDERSON. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. All day long we have been getting testimony to the effect that the ICC is not following the law. It is not regulating properly according to the law which is kind of interesting because after deregulation, you might imagine that industry would come here and say they are doing too much regulating. That was initially the idea which most subscribed to.

And I want you to comment on and further explore with me your half-and-half life which you mentioned. You are half regulated I assume by that, and you are half not regulated.

Dr. RUANE. Right.

Mr. SMITH. So if you could change the world tomorrow morning, what would you have the ICC do from your point of view to correct a situation which we have been betting all day long, that they are obviously not regulating enough. I would like your thoughts about that.

Mr. MCSHANE. Under their previous arrangements, they were very much concerned with our pricing, whether the pricing was correct and justifiable, whether it was compensatory, and whether or not a carrier was able to make a reasonable profit based on his investment and his endeavors.

At the present time with the widespread discounting that is allowed, you are getting variances all over the lot as to what can be allowed and what can be tolerated, and under the form of the act, they are allowing discounting beyond—you mentioned deregulation. We have not been deregulated, sir. We have, of course, been reregulated to be able to introduce some pricing into our field of endeavor.

In the meantime, many of the rules and constraints that were supposed to have been alleviated by the Commission have not. The paperwork roles on. The ease of entry roles on practically indiscriminantly, and the supervision of our tariffs and rates and discounts are virtually not going on, particularly for the small carrier. They do not have the staff to properly supervise it.

So while on the one hand we can practically do anything pricewise, on the other hand we still have to do 200 pieces of paperwork for every shipment. We have that entire burden. We are still being watched over by the Commission for consumer activities which we think is unnecessary in view of the improved record, and now we seem to be faced with the possibility of total deregulation of all pricing but not of all the consumer demands that they are putting on our industry.

So we would, in fact, be half free. If, in fact, deregulation, and I am not proposing that it take place, were to take place, you have to have total deregulation including all consumer activities that go with the paperwork, the requirements and the necessity of anybody else in any kind of industry as they operate today.

I hope I have tried to address it as best I can.

Mr. SMITH. Thank you.

Mr. MCSHANE. This is the problems of a transition time.

Mr. SMITH. I guess I hear what you are saying. You are not advocating total deregulation?

Mr. MCSHANE. No, I am not.

Mr. SMITH. And yet you have the encumbrance of the heavy paperwork without the benefits of regulation.

Mr. MCSHANE. But if the Commission was living up to the nature and the letter of the law as you enacted it in 1980, then the paperwork requirements could, in many ways, be reduced and eliminated, making it easier for us.

Things that are unnecessary for consumers could be eliminated from this framework, and the pricing would have flexibility but would not have the gouging and the extremes that are existing at the present time because they do not put any kind of restraint or controls on it. They are, in fact, acting as if we were totally deregulated in that area.

Mr. SMITH. Am I hearing you say that because of the lack of control on the entry into your business that the ICC is trying to deregulate you de facto.

Mr. MCSHANE. Yes, I would say that. My judgment would be in the direction, and it is not just in entry. It is in rate filing per se which is virtually out of control. Entry is new competition. That is one thing. But rate filing and the reduction in the profits and return on equity and investment in our industry has been very substantial.

Mr. SMITH. Thank you.

Mr. ANDERSON. Thank you all very much for your presentations. Our final witness for the day is Alan Wohlstetter.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF ALAN F. WOHLSTETTER

Mr. Chairman and members of the committee, I thank you for the opportunity to appear before your Committee at this hearing on oversight of the implementation of the Motor Carrier Act of 1980. I am an attorney specializing in transportation law with the firm of Denning & Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. During the past 25 years, I have actively counseled and represented clients before the Interstate Commerce Commission, primarily those engaged in the household goods moving industry.

The purpose of my appearance today is to present to the Committee my concern with the Interstate Commerce Commission's actions in the field of motor contract carriage of property and particularly the contract carriage of household goods. In my opinion, this is an area where the Commission is not adhering to the intent of Congress embodied in the Motor Carrier Act of 1980 and is taking what I consider to be drastic steps to completely deregulate motor contract carrier entry and rates in a manner which is not in the interest of the public or the motor carrier industry.

Since enactment of the Motor Carrier Act of 1980, the Commission has obliterated the distinction between common and contract carriage preserved by Congress, by opening entry into the field of motor contract carriage through blatant disregard of the statutory criteria for contract carrier status. In addition, during 1983, the Commission, in Ex Parte MC-165 has exempted all motor contract carriers for all time from the tariff filing requirement of the Interstate Commerce Act,[1] and has recently begun issuing open-ended class permits to authorize contract carriers to serve to large groups of shippers regardless of whether the individual members of the class meet the statutory criteria for contract carrier status, 49 U.S.C. § 10102(14)(B).

While Congress relaxed some restrictions on contract carriage by removal of the limitations on dual operations and on the number of shippers which a contract carrier may serve, the Motor Carrier Act of 1980 did not direct the Commission to completely open entry into motor contract carriage. To the contrary, the 1980 Act retained the basic definitional requirements for a contract carrier, as follows:

"(14) 'motor contract carrier' means—

* * * * * * *

"(B) a person providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons—

"(i) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

"(ii) designed to meet the distinct need of each such person." (49 U.S.C. § 10102(14)(B)."

This Committee's report on the Motor Carrier Act of 1980 clearly states its intent that the Commission adhere to these definitional criteria:

"Motor contract carriers will continue to be required to meet the standard of dedication of equipment or providing a service to meet a shipper's distinct need, but will be able to expand their service to serve more shippers." (H.R. Rep. No. 96-1069, 96 Cong. 2d. Sess. at 22).

I submit to the Committee that the Commission is not adhering to this direction. Each and every contract carrier application which is filed is preliminarily granted by the publication of a decision notice in the Federal Register. There is no meaningful review of the representations in the application to determine whether the applicant's proposal satisfies the dedication of equipment or distinct needs requirements for contract carriage. Instead, the Commission publishes conclusory findings, which do not indicate the basis for determining that the service proposed is contract carriage. If the application is not opposed, the contract carrier permit is automatically granted, and if the application is protested, the Commission routinely determines the service proposed is contract carriage and grants the application.

The Commission's records demonstrate the extent that the Commission has abrogated the regulatory requirements for entry into contract carriage. The Commission's Motor Carrier Authority Evaluation Branch has advised that, during fiscal 1983, of the motor contract carrier applications decided, 3,420 were granted in their entirety, 7 were conditionally granted, 9 were partially granted, and only 13 were denied. I do not know why the 13 applications were denied, but even if they were based on findings that the services involved were not contract carriage, which I doubt, the denial rate on that basis would be only 0.4 per cent which demonstrates that the Commission is not making any meaningful review of evidence to require adherence to the statutory criteria for contract carriage.

The impact of this open entry policy has been significant in the household goods field. Prior to the Motor Carrier Act of 1980, there were no contract carriers of household goods. Since the effective date of the Act, however, the Commission has granted hundreds of contract carrier applications of common carriers of household goods, even though the common and contract transportation services provided are identical, on the basis that any high-volume shipper is entitled to preferential contract carrier service. To my knowledge, only one such application has been denied and that denial was by an employee review board and was not appealed to the Commission. This policy of not requiring adherence to the contract carrier criteria is not consistent with the Commission's mandate to observe the statutory distinction between motor common and contract carriage, which was preserved in the Motor Carrier Act of 1980.

The Commission's routine grants of contract carrier household goods permits to common carriers, even though there is no proof that the contract service will be any different or more specialized than the common carrier service, permits circumvention of the Interstate Commerce Act's prohibitions against discriminatory rates and practices, 49 U.S.C. § 10741, which apply only to common carriers. This allows large national accounts with bargaining position to obtain preferential rates and services to the prejudice of smaller shippers and individuals who are not able to obtain such preferences. The Commission closes its eyes to such discriminatory practice by declaring the service contract carriage even though it duplicates in all respects the same carrier's common carrier service.

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[1] 49 U.S.C. §§§ 10702, 10761 and 10762.

Another concern is that motor contract carriers of household goods do not have to comply with the Commission's consumer protection regulations, 49 C.F.R. § 1056, which Congress required the Commission to promulgate for the protection of household goods shippers. (49 U.S.C. § 1110).

In its zeal to deregulate contract carrier entry, the Commission has now embarked upon a policy of granting permits to serve entire classes of shippers.[2] These permits allow motor contract carriers to serve individual shippers under contract without first presenting the proposal to the Commission for a determination that the service qualifies as contract carriage and is warranted under the statutory entry criteria. By issuance of a class permit, the Commission relieves itself of responsibility to adjudicate individual applications for extensions of contact carrier services and, by so doing, the Commission has yielded its ability to ensure that the service to be provided is contract carriage, as required by the Interstate Commerce Act, 49 U.S.C. § 10923(d)(2).

One such class permit was recently granted to transport household goods under continuing contracts with "persons (except individuals) as defined at 1 U.S.C. § 1" [3] which definition encompasses all shippers except unincorporated individuals. This class permit is typical in that it was granted without any public support, and without any specific evidence of shipper service needs, which proof is a necessary prerequisite to contract carrier status. Furthermore, the class is so broad that it obviously includes many persons who do not meet the criteria for contract carriage.

Prior to the Motor Carrier Act of 1980, the Commission issued a class permit only for armored carrier service, which the Commission determined was so highly specialized, that it had to be tailored to the individual needs of each shipper served. Therefore, in granting the class permit, the Commission found that all users of armored carrier service qualified as contracting shippers because they had distinct needs. In contrast, the commission is presently issuing class permits without any such assurance.

Even though the Commission has a statutory duty to ensure that service authorized in contract carrier permits will be performed as contract carriage, the Commission abdicated its responsibility in issuing the class household goods permit by stating that the carrier, instead of the Commission, would determine which shippers qualified for contract carrier service. In effect, this is a carte blanche for the carrier to contract with whomever it desires, regardless of whether they meet the criteria for contract shipper status. Since the grant of the first household goods class permit, a number of additional such applications have been filed and the trend is continuing. Unless stopped by Congress or a Court, the necessary effect of the grant of such permits will be deregulation of entry into the motor contract carriage of household goods, which is a result that is not consistent with the intent of Congress in the Motor Carrier Act of 1980.

Topping off the Commission's deregulatory efforts in the field of motor contract carriage is its blanket exemption of all motor contract carriers from the tariff filing requirements for all time. Ex Parte No. MC-165, "Exemption of Motor Contract Carriers from Tariff Filing Requirements," served May 27, 1983. The effect of this exemption is to nullify the statutory provisions requiring the filing of contract carrier rate schedules, enacted by Congress for the protection of common carriers and retained in the Interstate Commerce Act, as revised by the Motor Carrier Act of 1980. The Commission has taken it upon itself to write this requirement out of the Act by the grant of a blanket tariff filing exemption for all contract carriers for all time.

The over-all impact of the Commission's actions since the Motor Carrier Act of 1980 has been to eliminate all regulatory controls over motor contract carriage of property. The Commission does not require that contracts be filed and makes no effort to ascertain that the contracts comply with its regulations, i.e., that they are bilateral and cover a series of shipments over a stated period of time. The Commission has eliminated tariff filings, and, thus, allows contract carriage to be performed pursuant to secret rates. And, by routinely issuing contract carrier permits without requiring evidence that the service will be different or more specialized than the same carrier's common carrier service, the Commission is permitting discriminatory services by ignoring the statutory distinction between common and contract carriage.

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[2] The Commission has commenced issuing class permits even though it has not issued a final policy statement in the pending proceeding, where public comments have been received, Ex Parte No. MC-165 (Sub-No. 1) "Motor Contract Carriers of Property-Proposal to Allow Issuance of Permits Authorizing Industry-Wide Service, "48 Fed. Reg. 24397, et seq. (June 1, 1983).

[3] Interstate Van Lines, Inc. No. MC-1745 (Sub-No. 17).

I submit that if Congress had wanted to eliminate regulation of motor contract carriage or to abolish the antidiscrimination prohibitions in the Motor Carrier Act, it would have done so. Since Congress did not take these actions, the Interstate Commerce Commission should be directed to regulate motor contract carriage by properly administering the Interstate Commerce Act, to require evidence to support the issuance of contract carrier permits and to prohibit discrimination among household goods shippers under the guise of contract carriage.

Mr. SUNIA. Please proceed.

TESTIMONY OF ALAN F. WOHLSTETTER, ATTORNEY

Mr. WOHLSTETTER. Thank you. I certainly am not going to read the statement, and I took care to try not to duplicate the issues which are being addressed so ably by the other organizations.

The question might be asked as to why am I up here speaking as an individual? I guess I have been involved in more household goods transportation cases than most people around and I think I know what is going on at the Commission. I do not want to overstate or cover too much in my limited time which I intend to further limit.

I want to direct my attention to one matter which has not been covered by anyone, and that is that when Congress passed the 1980 act, they made very clear in the legislative history in the House report which accompanied the bill that the dichotomy between contract and common carriage was to be preserved, that except for dedication of equipment to the use of a specific shipper, which we are not involved with, the only way a person could get a contract carrier permit, as distinguished from a common carrier certificate, would be to establish that the shipper or shippers which he was to serve had a unique need which is very different and distinct than the need that other shippers had.

That did not seem to slow the Commission down very much, however. Their records show that they have granted hundreds of household goods contract carrier permits without any showing of any distinct need of a shipper except that he wants good service, and I submit that is not a very distinct need, and that he wants a lower rate, and I parenthetically say who does not.

The result of that is that certain shippers who have some economic leverage have been able to get, under the guise of contract carriage, certain rates and service which has been withheld from the smaller shipper.

Now, the important thing to realize is the distinction between a common carrier and a contract carrier. Now, what does a common carrier have to do under the present act? First, he must file his rates with the Commission so that they are available for public inspection to all.

Second, and most important, he must serve all shippers without discrimination, and that was made clear in the legislative history of the 1980 act that there was no attempt to eliminate in this reregulation bill any of the prohibititions against unjust discrimination against shippers.

Third, the liability in the household goods area in the case of damage or loss to a shipment is controlled by the Commission. In fact, it is full liability unless the Commission issues a specific order permitting limited liability.

And last, and most important, this Congress went to great length to issue a series of consumer protection provisions in the Household Goods Transportation Act, which applies to common carriers of household goods.

Now, let us turn the page and look at a contract carrier as it is handled by the Interstate Commerce Commission. First, no contracts have to be filed with the Commission. So, you do not know whether there is a contract or not.

Second, there is no enforcement of the Commission regulations which provide that there must be bilateral obligations, mutual obligations between the shipper and the carrier. In other words, if the shipper gets a lower rate, he must say I am going to give you so many shipments. Not only is there no enforcement, but I know of my own knowledge that the contracts do not so provide.

Third, the charges which the contract carrier assesses the shipper do not have to be filed with the Commission under the Commission's latest maneuver which is to exempt contract carriers from filing their charges with the Commission.

This means that all the deals that are made are secret deals and secret rates which are the very thing that led to the promulgation of the Interstate Commerce Act in the first place and is basic to that act.

And last, and this is really unbelievable to me, by this guise there is no requirement that the household goods contract carrier follow the terms and conditions of the Household Goods Transportation Act and any of the consumer protection that this Congress spent a lot of time in coming up with a series of basic regulations. I am not talking about the Commission's rules. I am talking about what is in the statute itself.

And by using this device of contract carriage, in effect, they throw out the regulation in the household goods area that we certainly contemplated, and I participated with the staff in connection with the act.

And nobody realized that where all household goods, with no exception, moved as common carriage that after this act there would be these multiple duplicate contract carrier operations without any of the protections.

I would hope that this phase of the act could be specifically looked at and the Commission could be called to task for granting contract carrier authorities resulting in the problems that I have attempted to outline and which are covered in a more detailed manner in my statement and to direct the Commission not to presume that every need is unique but to make the statutory findings required as a condition precedent to the grant of this contract permit.

I do not say this will solve all the problems, but I can assure you this is a simple one to solve and it is one which has had a lot of adverse impact on the industry, on small shippers, on small carriers and on the small agents that Mr. Ruane was representing in his association. Thank you.

If there are any questions, I would be glad to respond.

Mr. ANDERSON. Thank you, Alan. Would you favor legislation that would preclude or limit the household goods carriers from performing contract service?

Mr. WOHLSTETTER. I would think it would make it a lot more definite and specific and there would be no loss to shippers if household goods contract transportation were to be permitted only upon the dedication of equipment for the exclusive use of a single shipper. That is the other means of performing household goods transportation.

And I would have no personal problem if contract carriage were eliminated completely. I do not know what the other segments of the industry would say. But if we went at least half the distance, I think it would eliminate the problem that has come up.

There has been no case that I am aware of where the Commission has granted a household goods carrier contract authority where there is exclusive dedication of the equipment, but Mr. Chairman, if it were eliminated, I think it would solve a big problem and would result in fair treatment, open rates, and then you would get into the areas that have been delineated by the speakers who have preceded me here on what the Commission does or does not do on volume discounts.

Mr. ANDERSON. Mr. Smith?

Mr. SMITH. No questions, Mr. Chairman.

Mr. ANDERSON. Thank you, Alan, for a very fine presentation. We are very happy to see you again.

Mr. WOHLSTETTER. Thank you, Mr. Chairman. Thank you members of the committee.

Mr. ANDERSON. That will complete our hearings on this matter until we have the Government witnesses. I believe that is coming up in mid-November.

With that the meeting is adjourned.

[Whereupon, at 3:40 p.m., the subcommittee adjourned subject to the call of the chair.]

OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980; THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980; AND THE BUS REGULATORY REFORM ACT OF 1982

WEDNESDAY, NOVEMBER 16, 1983

House of Representatives,
Subcommittee on Surface Transportation,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met at 10:28 a.m., in room 2154, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the Subcommittee on Surface Transplantation will come to order.

On October 25 and 26, this subcommittee held oversight hearings on the impact of three major bills which were enacted in previous Congresses; the Motor Carrier Act of 1980, the Household Goods Transportation Act of 1980, and the Bus Regulatory Reform Act of 1982. Many of the witnesses who presented testimony on those dates expressed concern about the implementation of each of these laws.

The fact that these concerns were expressed was surely not unexpected as, indeed, they were similar to those we had heard in past years. This year, though, they carried with them more weight than in the past. This is true, first, because of the stridency and renewed sense of urgency with which they were delivered. But additionally, I consider these hearings and that testimony to be more significant than in past years simply because more time has now elapsed since enactment of the 1980 laws.

In the intervening period, new concerns have been raised while issues that seemed important 1 or 2 years ago have fallen by the wayside. A perspective has been gained based on the experience that only time can provide. The industries have gained new insights, and through our hearing process have shared them with us.

One concern that has remained constant the past 2 years, the one I mentioned a moment ago, is that the ICC has taken decent laws, and implemented them in a manner that is capricious, inconsistent with the statutes, and detrimental to the well-being of the industry and the general public.

Today's witnesses will be primarily from the Federal Government. I am particularly pleased that each of the four Commissioners have agreed to join us. I know their schedules are busy ones but, frankly, I think there is little they could be doing that is more important than to confer with the subcommittee which wrote much of the legislation they are charged with implementing, and which some have charged them with misimplementing.

Before we begin, let me make clear that we will be keeping this hearing record open so that we might have the opportunity to review the responses we receive today, and submit whatever followups we deem necessary or appropriate.

We will hear from the first group as a panel: Chairman Reese Taylor, Vice Chairman Malcolm Sterrett, Commissioner Frederic Andre, and Commissioner Heather Gradison. And we do have the prepared statements of all four. The statements that are presented will be made a matter of the record. You can read them or extemporize, proceeding any way you wish. And you may make your statement and then we will direct questions to the full panel.

How do you want to start?

Mr. Taylor, the full text of your prepared statement will appear in the record at this point.

[The statement referred to follows:]

STATEMENT OF REESE H. TAYLOR, JR., CHAIRMAN
INTERSTATE COMMERCE COMMISSION
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
ON
IMPLEMENTATION OF THE BUS REGULATORY REFORM ACT

November 16, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate this opportunity to appear before you today to testify with regard to the Commission's implementation of the Bus Regulatory Reform Act of 1982 and its impact on the intercity bus industry and others affected by the legislation. As you know, the Commission strongly supported passage of the Bus Regulatory Reform Act and worked with Congressional staff as its provisions were drafted. I myself was actively involved in the legislation. Many of the specific reforms we advocated were included in the bus legislation which was enacted.

Most provisions of the Bus Act did not become effective until 60 days after enactment in order to allow time for development of new rules before the effective date. After the Act was signed by the President on September 20, 1982, the Commission moved expeditiously to propose implementing rules, so that the new eased regulatory scheme could be in place when the Act's provisions became effective. I am pleased to report that the Commission was successful in completing these proceedings in this very short timeframe. The rulemakings, all of which have now been completed, are listed and briefly summarized in Appendix A.

As stated in our testimony urging passage of the bus legislation, we believe that the Act offers a balanced approach by easing entry into new routes, establishing a more certain procedure for exit from unprofitable service, and providing bus companies greater flexibility to price their services. We continue to believe that this approach is the most practical and efficient means available to maintain adequate service, both for the public generally and for the poor, the elderly, the military, and students, who utilize bus service in the greatest numbers.

The Bus Act ended an era of Federal and State regulation of buses that fostered the emergence of two dominant carriers in most long-haul markets and monopoly in many light-density and short-haul markets. Competition, rather than government regulation, is now to be the primary determinant of fare and service levels in the industry. Experience with other industries, such as trucking, that have moved from a regulated to a more competitive economic environment, convinces us that it may well be another year or two before the full impact of bus regulatory reform is realized. Nonetheless, in the year since passage, many firms have come forward to take advantage of the new operational freedoms offered them by the Act.

Let me begin the discussion of the effects of implementation of the Bus Act by focusing on three key areas--eased entry, rate flexibility in conjunction with limitations on antitrust immunity, and a new exit policy.

ENTRY

We are pleased to report that the Act has had a significant effect on entry. It has allowed many existing firms to rationalize route structures and to offer passengers new services at competitive fares in many regular route markets. In the past, expansion was often based on what regulation permitted, rather than a determination as to which route structures would be the most efficient and profitable additions to an existing route system. Under the Bus Act entry standards, major carriers have moved to rationalize their route structures. Many smaller carriers have also utilized this opportunity to enter into or expand existing regular route operations. There has been a dramatic increase in charter services, which require very low start-up or capital costs, through entry of new firms and territorial expansion by existing firms.

From the Act's passage until mid-October, 1983, more than 2,000 applications have been filed by new and existing firms for regular route and charter authority. Of the total, 1,097 have been filed by new applicants and 931 by existing carriers. Thus, it is clear that the entry provisions of the Bus Act are having their intended effect. Approximately 200 of these applications have been for regular route authority. Regular route applications represent about 10% of all applications for permanent passenger authority over this period.

In the area of charter and tour services, low entry costs, as indicated, have induced many new entrants to take advantage of the Bus Act. More than 1,700 charter applications have been received, and it appears that more than half have been from first-time applicants.

One issue that has arisen in the entry area concerns applications by government-subsidized carriers to operate charter and special services. These carriers may not claim the advantage of the "fitness only" burden of proof normally applicable to privately owned bus lines seeking the same authority. Rather, these applications may be denied if it is found that the proposed service is not consistent with the public interest. The American Bus Association has filed a petition to consolidate the seven pending applications of these subsidized carriers.[1] The ABA contends that it is inconsistent with the public interest to grant charter and special operations authority to any applicant which can use its subsidized position to mount potentially unfair competition against carriers operating in private enterprise. Replies have been filed, and the matter is presently pending.

RATES

The industry has also taken considerable advantage of the rate freedoms contained in the Bus Act. Although the major carriers have established a number of discount programs, fare increases have also occurred on certain routes as the industry struggles to overcome its generally weakened financial condition resulting from the recent recession. For example, certain carriers including Greyhound elected to take advantage of the zone of ratemaking freedom established by the Bus Act and increased their fares by 2 percent in January 1983. Effective March 5, 1983, interstate passenger fares were raised for these carriers by 8 percent and for others by 10 percent through a general rate increase filed by the National Bus Traffic Association. Responding to the more competitive market created by the Bus Act, however, carriers have also filed a number of independent rate actions. The majority of these independent rates have been filed by carrier members of the National Trailways Bus System and Greyhound.

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[1] Subsequently, on October 21, 1982, NJ Transit Bus Operations, Inc., withdrew its application.

With regard to the rate bureau provisions of the Act, the Commission established revised standards and procedures for the bus industry rate bureau in Ex Parte No. 297 (Sub-No. 6). In large part, the standards are similar to those adopted for the motor carrier industry, but there are several departures from our motor carrier standards, based on the differences in the two industries. The additional standards adopted by the Commission for the bus industry rate bureau are set forth in Appendix B to this statement. The National Bus Traffic Association has filed an amended agreement in conformity with the Commission's rules; comments were permitted and NBTA's reply to comments is due November 2, 1983. Subsequently, the Commission will review the amended agreement. In this regard, it should be noted that the provisions of the bus legislation further defining the scope of antitrust immunity are largely self-executing, and the bureau and its member carriers must comply with the new legislation while the amended agreeement is being considered.

Last June, the Commission testified before the Motor Carrier Ratemaking Study Commission, reiterating the view that there is even less reason for continuation of antitrust immunity for passenger carriers than for motor carriers of property. At that time, the Commission indicated that it saw no need for continued antitrust immunity for the collective determination of general rate changes, innovative fare changes, or broad changes in the tariff structure of motor common carriers of passengers. This continues to be our view.

Prior to passage of the Bus Act, many states held intrastate rates at an artificially low level, causing subsidization of regular route intrastate passengers by interstate passengers. With the new relaxed entry policy, many carriers would face serious financial difficulties if they faced new competition over interstate routes, while at the same time they were required to continue to provide certain intrastate services at non-compensatory fares. To preclude this possibility and to remedy situations where State actions are creating an unreasonable burden on interstate commerce, Section 17 of the Bus Act gave the Commission authority to review intrastate rates of interstate motor common carriers of passengers. Under this provision, the Commission may prescribe an intrastate rate increase if a carrier has been denied permission to increase the intrastate rate or the State authority has failed to act upon such a request within 120 days, and the Commission determines that the existing rate causes an unreasonable burden on interstate commerce. In Ex Parte No. MC-160, Procedures for Review of Intrastate Bus Rates, the Commission adopted rules for processing petitions that seek review of State regulation of intrastate rates of interstate bus carriers.

The Commission has received 23 petitions for intrastate rate review. Sixteen have been granted -- generally on the basis that the carrier's existing intrastate fares are lower (often significantly lower) than its interstate fares for comparable service within the State without any justification for the disparity, and, therefore, such intrastate fares impose an unreasonable burden on interstate commerce. Two of the petitions have been dismissed on grounds that the Commission lacked jurisdiction to consider them. Five remain pending as of this date. Petitions for reopening have been filed in four of the proceedings; two have been denied and two are currently pending. Finally, in one of the dismissed proceedings, No. MC-C-10851, Greyhound Lines, Inc., instituted a court action before the United States Court of Appeals for the Ninth Circuit, on September 16, 1983.

EXIT

One of the major concerns with regulatory reform legislation involving any mode of transportation has been the effect on service to small communities. In most small communities, buses represent the only form of public passenger transportation available. Nevertheless, studies indicate that the demand for regularly scheduled intercity bus service in rural and small communities is small and has been declining for a number of years. In the decade before passage of the Bus Act, it is estimated that approximately 1800 communities lost all intercity bus service.

Since enactment of the Bus Act, Greyhound and Trailways have proposed to drop or have dropped numerous points from their route system. In the case of smaller carriers, however, it appears that few are dropping service to points they have been serving. The discontinuances that have occurred are, for the most part, not an unexpected nor unintended result of the Bus Act, since one of the aims of the Act is to provide carriers both greater entry and exit freedoms so they can best reorganize and rationalize their route structures.

The Commission intends to monitor the extent of route discontinuances. Accordingly, questionnaires have been sent, as part of our bus terminal study, to all ICC-regulated passengers requesting the names of all points added to and deleted from their service schedules since the effective date of the Act.

In the past, bus carriers have been prevented by State regulatory authorities from dropping many routes which were severely under-utilized and, therefore, unprofitable. In order to address this problem, the Bus Act provided statutory authority for the Commission to preempt State regulation of exit from regular-route passenger service in certain circumstances. The Commission promulgated final rules implementing this provision in Ex Parte No. MC-161, Preemption of State Regulation of Regular-Route Exit--Motor Passenger Carriers.

The Commission has received 23 petitions for intrastate exit review. Each involves intrastate transportation being provided on a route over which the carrier was granted authority to provide interstate transportation on or before August 1, 1982. In such instances, the Bus Act requires the ICC to grant a petition for discontinuance unless it finds, on the basis of evidence presented by those objecting, that such discontinuance is not consistent with the public interest or that continuing the transportation will not constitute an unreasonable burden on interstate commerce. One petition has been dismissed for lack of jurisdiction, one has been denied based on a record that would not support a finding that continuation of the service would constitute an unreasonable burden on interstate commerce, three were unopposed and have been granted pursuant to 49 U.S.C. 10935(d), and ten have been granted because those objecting to each proposal failed tc make the requisite statutory showing. The remaining eight petitions are pending.

Because of the importance of this issue, I would like to summarize the action taken by the Commission in several representative cases. In each, the Commission had jurisdiction based on denial of an exit request by the State authority or the State's failure to take final action on a request by the 120th day after its filing.

No. MC-1515 (Sub-No. 332), Petition of Greyhound Lines, Inc., for Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. 10935, decided Agusut 23, 1983, served August 25, 1983.

As the first exit case decided on the merits, this decision provides a general picture of the evidentiary factors to be considered and the relative weight to be accorded each factor. In this proceeding, Greyhound had originally requested that it be allowed to discontinue service over 11 routes, and the State

Commission had granted permission to discontinue service over five of these routes. The Commission determined that Greyhound should be allowed to discontinue service over all the routes in question.

The Commission noted that the history and purpose of the Bus Act point in the direction of a lesser regulatory role, but with special concern in exit cases for those who must depend on bus service. In this case, involving a relatively narrow exit proposal, it was held that those objecting to discontinuance had not met their statutory burdens. The Commission accorded great weight, as mandated by the Bus Act, to the extent to which interstate and intrastate revenues derived from the involved service were less than the variable costs of providing the service, and it held that, in the absence of definitive evidence to the contrary, a carrier's business judgement that routes cannot be made profitable through fare increases is entitled to substantial weight. Greyhound was required to continue service for 45 days so that State, regional or local groups could consider possible subsidy payments to Greyhound or make plans for alternative services.

No. MC-2890 (Sub-No. 63), Petition of American Buslines, Inc., for Review of a Decision of the Nebraska Public Service Commission Pursuant to 49 U.S.C. 10935, decided September 8, 1983, served September 13, 1983.

In this case, American Buslines, Inc., a wholly-owned subsidiary of Trailways, Inc., had been denied permission by the Nebraska Public Service Commission to discontinue intrastate service over a route in Nebraska. American Buslines then petitioned the Commission for permission to discontinue the route. This decision was the first to state in specific terms the evidentiary considerations that bear directly on each statutory burden of the parties objecting to a discontinuance - whether continuing the transportation constitutes an unreasonable burden on interstate commerce and whether the discontinuance is consistent with the public interest. In granting the petition, the Commission concluded that evidence establishing that revenues are significantly below variable costs and a finding of unprofitability requires a conclusion that continuing transportation over the considered route will constitute an unreasonable burden on interstate commerce. It also concluded that, separate from consideration of route profitability, the public interest question requires consideration of, and a balance between, the local interests in support of continuing service and the policy of the Bus Act that favors exit from unprofitable routes.

To that end, the Commission held that consideration must be given to evidence of unprofitability and the attendant burden on interstate commerce, created by the necessity of cross-subsidization to sustain local and intrastate services at the expense of long haul and interstate passengers; the extent of public testimony in favor of continued service; the absence of any subsidy or offer of subsidy, which belies any strong interest in maintaining unprofitable service; and whether alternative services are available. In this instance, the showing of public need was weak, other service was available along the route, and additional parallel service was promised. Under the circumstances, the Commission found that permission to discontinue the route should be granted.

No. MC-59238 (Sub-No. 74), Petition of Virginia Stage Lines, Inc., for Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. 10935, decided September 13, 1983.

The Commission, in this proceeding, denied the petition of Virginia Stage Lines, Inc., a wholly-owned subsidiary of Trailways, to discontinue service over certain routes in West Virginia on the ground that the carrier failed to carry its burden of proving the revenues from, and the costs of, providing service over the route proposed to be abandoned. The Commission held that the carrier failed to meet this burden because its exhibits set forth only total figures that included revenues and costs for service beyond those proposed to be discontinued, and did not separate from the totals the amounts of revenue and costs attributed to the operations sought to be discontinued. As a result, the figures could not be considered competent to prove that revenues failed to cover variable costs. Since revenues had not been shown to be less than cost, the Commission held that the record would not support a finding that continuation of the service would constitute an unreasonable burden on interstate commerce. An appeal was filed by the carrier on October 3, 1983.

No. MC-1515 (Sub-No. 336), Petition of Greyhound Lines, Inc. for Review of a Decision of the Oklahoma Corporation Commission Pursuant to 49 U.S.C. 10935, decided September 15, 1983, served September 19, 1983.

In this case, the Commission granted Greyhound's petition for permission to discontinue service over three routes in

Oklahoma after the Oklahoma Corporation Commission failed to act on Greyhound's discontinuance request within 120 days. In this decision, the Commission specifically stated that mere identification of points and populations which will lose service cannot be taken as a sufficient showing of public interest to warrant denial of an exit request, as it is axiomatic that communities will lose service when a discontinuance is granted. While the goals of the national transportation policy require that the needs of passengers and shippers be met, a carrier should not be required to continue unprofitable operations which jeopardize its ability to provide service on other routes. Thus, even when small communities will be left without public passenger transportation, there must be meaningful evidence from protestants with regard to the impact of discontinuance in order to overcome other evidence, such as route unprofitability, which favors discontinuance.

OTHER ISSUES

To aid the Commission in assessing the impact of the Bus Act on bus passengers, we have had our Office of Compliance and Consumer Assistance gather information on the extent of bus passenger complaints to State regulatory commissions and to the ICC. For comparison purposes, we have collected complaint data for one year prior to the Act and for eight months afterward.

The overall results are encouraging. The intercity bus industry carries passengers on almost 400 million trips a year. Yet, in the year prior to the Bus Act, we received only 296 complaints about bus service. The great majority of these, 248, or 83.7 percent, were concerned with some aspect of quality of service, such as smoking, equipment or driver problems, failure to keep to schedules, etc. In the eight months after enactment, the number of bus passenger complaints to this Commission decreased to 128 (192 on an "annualized basis"). This decrease in complaint levels was due primarily to a reduction in complaints concerned with quality of service (from 248 in the 12 months preceding the Act to 38 in the eight months after enactment).

Complaints to the States from bus passengers since enactment of the bus legislation have centered on service reductions. Counting each signature on a petition to a State Commission as a single complaint, the number of complaints to states concerning actual or proposed service reductions rose from 407 in the 12 months preceding the Act to 5,052 in the eight months after enactment. These complaints to States concerning service reductions, which are for the most part signatures on petitions involving discontinuance of points or routes or a reduction in bus schedules, constituted over 90 percent of the post-Act bus complaints to States.

In discussing the effects of the Bus Regulatory Reform Act, another factor that needs to be examined is the financial condition of the industry. The bus industry did not fare well during the recent recession. In 1982, net income of Class I carriers fell to its lowest level since 1960. As you know, concern over the industry's financial condition was one of the factors which led to passage of the Bus Act. The recent recovery has not yet improved carrier profitability. The ten largest bus companies experienced increased losses in the first quarter of 1983. While these companies had positive net income in the second quarter, earnings were 9.8% below levels in the same period in 1982. However, the Commission is firmly convinced that, as carriers take advantage of the new freedoms contained in the Bus Act and as the economy continues to improve, bus carriers' financial results will improve as well. Additional information concerning recent earnings of the Nation's 10 largest companies is set forth in Appendix C.

In addition to instituting the rulemakings necessary to implement the Bus Act, the Commission conducted several projects in order to assist the industry, State and local governments, and the public to adjust to the changes brought about by the Act. Shortly after enactment of the bus legislation, the Small Business Assistance Office of the Commission published a booklet describing the highlights of the Bus Regulatory Reform Act and a guide to applying for permanent operating authority as a motor carrier of passengers. The Commission's Office of Special Counsel also prepared a publication, entitled "Public Participation in Interstate Commerce Commission Cases". These publications have been widely distributed to State and local officials, bus companies, and other persons interested in Commission proceedings in the bus area.

In May and June 1983, the Commission conducted 11 regional seminars which reviewed the provisions of the Bus Act, entry procedures, licensing requirements, and intrastate rate and exit issues. The seminars were well attended by existing and potential bus operators, state and local government representatives, and individuals interested in bus transportation.

The Commission's Office of Transportation Analysis is preparing a study that will focus on the market structure, conduct, and performance of the intercity bus industry and how each of these matters is affected by the Bus Act. This staff study, which should be completed by mid-November of this year, will build upon and continue an earlier study, The Intercity Bus Industry, A Preliminary Study, which was issued in 1978.

In continuing and building upon the 1978 study, the present staff study will present extensive factual information on

the nature of the services that are provided by bus companies. Passenger service is being examined in terms of intrastate vs. interstate, regular route vs. charter and special operations, "commuters" vs. "travelers," and general fares vs. special (discount) fares. The role of package express as a service jointly provided with regular route service will also be discussed. Passenger profiles are being studied to determine the role of "near" substitutes (auto, plane, train) in the market for bus passenger service. The history of both State and Federal regulation of the intercity bus industry, and the emergence of Greyhound and Trailways as the two dominant firms, will also be reviewed.

A bus passenger profile and other studies are being used to assess demand characteristics of bus service and the current role of intermodal and intramodal price competition. With regard to service policies, the study will concentrate on analyzing service complaints, route abandonments, and small community service levels over the past few years. The Commission's field staff is providing assistance in this analysis.

The study will also discuss the extent, if any, of cross-subsidy within the industry, and it will examine the role of direct subsidy at the State level and the role of subsidy at the State and Federal level insofar as intermodal competition is concerned. As part of the study, the Commission's Bureau of Accounts is reviewing the profitability and financial stability of various firms.

Also, under Section 26 of the bus legislation, the Commission is conducting a study with the U.S. Department of Transportation on intercity bus terminals and stations. Questionnaires have been sent to all ICC passenger carriers and a sample of terminal and station managers. The data received is being analyzed to determine the pattern of ownership, location, and adequacy of the present terminal network. The implications of private vs. public ownership of terminals relative to the present level of competition between bus companies will also be considered.

Moreover, other competitive factors involving terminals and stations will be examined. These will include the restrictions which local governments may impose on the location of new terminals and stations, as well as the capacity of the present network of terminals and stations to adequately meet increased service demands resulting from deregulation and eased entry. Finally, the desirability of intermodal terminals and governmental assistance for non-urban bus terminals will also be explored.

CONCLUSION

I would like to conclude by emphasizing that the Commission has moved forward to implement the Bus Regulatory Reform Act, keeping in mind the Congressional findings which emphasize that the objectives of the national transportation policy can best be met through greater competition and reduced regulation. Clearly, a more competitive environment has already developed in the bus industry.

While, as mentioned earlier, it may be another year or two before the effects of passage of the Bus Act are fully realized, the Commission believes that the industry is already responding positively to the operational freedoms afforded by the Act and that the end result will be improved price and service options for bus passengers. As the existing carriers rationalize their route systems and new carriers enter the market and as noncompensatory rates are eliminated, a more efficient and financially healthy industry should develop with accompanying benefits for bus passengers.

This concludes my statement. I will be pleased to respond to any questions you may have.

APPENDIX A

MAJOR PROCEEDINGS IMPLEMENTING THE BUS REGULATORY REFORM ACT

BRRA	PROCEEDING	STATUS
Sec. 6 and 13	Ex Parte No. 55 (Sub-No. 56), Applications for Operating Authority - Motor Passenger Carriers - This proceeding modified rules governing the issuance of certificates and permits to motor common and contract carriers of passengers in interstate or foreign commerce, as well as passenger brokers. The proceeding also established rules governing the issuance of certificates to passenger carriers to provide intrastate transportation.	Final rules effective 11-19-82. Amended by decision served 9-6-83 to allow protestants in certain proceedings to reply to applicant's evidence regarding impact on the public interest or on commuter bus operations.
Sec. 6(g)	Ex Parte No. 55 (Sub-No. 43D), Certification of Canadian or Mexican Ownership or Control of Applicants for Motor Common or Contract Carrier Authority - Application procedures were temporarily modified to require certification regarding Canadian or Mexican ownership or control during the moratorium. When moratorium regarding Canada was lifted, the corresponding certification requirement was also ended.	Effective 9-29-82. Certification with respect to Canada no longer required effective 4-20-83.
Sec. 7	Ex Parte No. MC-142 (Sub-No. 3), Removal of Restrictions from Authorities of Motor Carriers of Passengers - Intermediate Points - Procedures were established to expeditiously handle applications of passenger carriers seeking to remove restrictions in outstanding certificates that limited intermediate point service along certificated interstate routes.	Final rules effective 11-19-82.

BRRA	PROCEEDING	STATUS
Sec. 9	Ex Parte No. MC-82 (Sub-No. 1), Provisions for Foreseeable Future Costs - Procedures were established to permit motor carriers of passengers to recover estimated or foreseeable future costs at six month intervals through their general increase filings.	Final rules served 11-19-82.
Sec. 10	Ex Parte No. 297 (Sub-No. 6), Bus Rate Bureau Procedures - The proceeding adopted standards for the operation of bus industry rate bureaus, generally applying the Motor Carrier Act standards to the passenger bus industry and delineating the different standards applicable only to the bus industry.	Final rules served 3-8-83.
Sec. 11	Docket No. 38900, Identification of Rates Filed Under Zone of Rate Freedom by Motor Carriers of Passengers - The proceeding amended the tariff publishing regulations to set forth the manner in which notification of changes in rates under the Zone of rate freedom will be made.	Final rules served 12-1-82.
Sec. 11(c)	Ex Parte No. MC-162, Procedures for Complaints Against Bus Carrier Rates and Fares - The proceeding established expedited procedures for the filing and handling, within 90 days, of complaints against effective bus rates and fares filed under the zone of rate freedom on the grounds that they are unreasonable.	Final rules served 11-19-82.

BRRA	PROCEEDING	STATUS
Sec. 14	Ex Parte No. 5 (Sub-No. 4), Passenger Broker Surety Bonds or Insurance - This proceeding removed existing regulations governing passenger brokers. Under the Bus Act, the Commission retained discretion to impose insurance and/or bond requirements on passenger brokers, but declined to do so in this proceeding.	Final decision served 2-2-83. Effective 3-4-83.
Sec. 15	Ex Parte No. 67 (Sub-No. 10), Rules Governing Temporary Authority and Emergency Temporary Authority of Motor Carriers of Passengers - The regulations governing TA's and ETA's were revised to reflect the statutory time frames established by the Bus Act.	Final rules effective 11-19-82.
Sec. 16	Ex Parte No. MC-161, Preemption of State Regulation of Regular-Route Exit - Motor Passenger Carriers - The rules adopted provided procedures under which the Commission will process petitions filed under this section.	Final rules effective 11-19-82.
Sec. 17	Ex Parte No. MC-160, Procedures for Review of Intrastate Bus Rates - This proceeding adopted rules for processing petitions that seek review of State regulations of intrastate rates, rules, and practices (rate) of interstate bus carriers.	Final rules effective 11-19-82.
Sec. 19	Ex Parte No. 429, Elimination and Modification of Certain Securities Regulations - This proceeding removed motor carriers from the requirements under Commission securities regulations.	Final decision served 6-6-83.

BRRA	PROCEEDING	STATUS
Sec. 21(b)	Ex Parte No. 400 (Sub-No. 1), Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343 - The proceeding established procedures for handling petitions for exemption of merger, consolidation, and acquisition of control transactions involving motor carriers of property	Final rules effective 11-19-82.
Sec. 21	Ex Parte No. 55 (Sub-No. 53), Motor Carrier Consolidation Procedures, General Policy Statement - This proceeding discusses the criteria to be applied in motor carrier consolidation proceedings before the Commission.	Final policy statement effective 11-12-82.
Sec. 27	Ex Parte No. MC-161 (Sub-No. 1), Employee Protection - Motor Passenger Carriers - The rules adopted establish procedures for determining the eligibility of individual employees for protection under the statute, and for publishing a periodic listing of jobs.	Final rules effective 6-23-83.

Appendix B

49 C.F.R. §1331.5 Additional standards and procedures required for passenger bus industry rate bureaus to retain antitrust immunity.[1]

(a) Rate bureau agreements must provide each carrier the absolute right of independent action. This must include the right to decide whether or when an independent action, or rate within the zone of freedom, will be docketed. In the absence of explicit instructions from the independent actor, the bureau may not docket the item until the proposal has been filed with the Commission. There may be no bureau discussion of the independent action prior to the effective date of the tariff item. The Bureau may cancel or change a rate established by independent action only for the purpose of tariff simplification, removal of discrimination, or elimination of obsolete items. The bureau must have the written permission of the independent actor to do so. General increases and decreases and broad tariff restructuring are not subject to these notice and consent requirements.

(b) Rate bureau employees and employee committees are restricted from initiating a tariff proposal or determining whether to adopt, reject, or otherwise dispose of proposals. Upon request, they may provide the proponent of a rate change with expert analysis and technical assistance. Any advice concerning an independent action proposal shall remain confidential.

(c) Upon request, bureaus will promptly divulge the name of the proponent of a tariff matter and the vote cast by any member on any proposal. Bureaus will provide detailed and timely public notice of meetings and their agenda. Discussion or voting on rate-related matters will not be permitted unless the meeting is reasonably noticed. Any person requesting admittance to a meeting at which rates or rules are being discussed shall be admitted immediately. Note taking and sound recording by attendees are permissible, provided the conduct of the meeting is not disrupted. If mail voting and telephonic communications are employed, they cannot be used to circumvent rate bureau restrictions. Any abuses will be investigated.

(d) Any carrier voting for another must possess a written proxy. The proxy must be dated and contain the grantor's signature, the specific items for which the vote is released, directions on voting, and certification of authority. A copy of the proxy and the written certification of authority executed by the proxy holder for the grantor will be made part of the voting record and ballot. Proxies may not be accepted for the purpose of certifying permission to cancel any item established by independent action which the carrier represented by proxy either initiated or joined. A proxy may be revoked at any time, either by subsequent written verification or by the member carrier appearing at a meeting and voting on its own behalf.

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[1] Rate Bureaus must also comply with 49 CFR 1331.1-.4 and guidelines adopted in Ex Parte No. 297 (Sub-No. 5), Motor Carrier Rate Bureaus-Implementation of P.L.-96-296, 46 FR 30092, June 5, 1981, and applied to the bus industry in Ex Parte No. 297 (Sub-No. 6), Bus Rate Bureau Procedures, served ______________.

(e) The quorum for holding meetings of the organization or a committee is 30 percent of the membership.

(f) The bureaus are required to maintain detailed minutes of all meetings where tariff items are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension or investigation for improprieties in the rate bureau process.

(g) Rate bureaus shall not file a protest or complaint with the Commission.

(h) Rate bureaus shall make a final disposition of a rate or rule by the 120th day after the proposal is docketed, except that if unusual circumstances require, the organization may extend such period, subject to review by the Commission. If the 120th day falls on a Saturday, Sunday, or public holiday, the final day for disposition will be the next working day.

(i) There can be no discussion of or voting on rates proposed under the authority of the zone of rate freedom.

(j) For the purposes of this subsection the following definitions shall apply:

(1) A "general increase" is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff or tariffs.

(2) A "broad change in tariff structure" modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An "innovative fare" will be determined on a case-by-case basis, the Commission will, on request, issue formal or informal opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are (1) a fare for unlimited passenger travel and (2) an experimental fare which provides for transportation, at the option of the passenger, over the line of one or more than one carrier.

(4) A "promotional fare" generally has three characteristics: (1) limited duration; (2) attractive price or level of service quality; and (3) some added feature in addition to those normally offered.

APPENDIX C

news

FOR RELEASE:
AUGUST 31, 1983

(202) 275-7252
BROWN

NATION'S LARGEST BUS COMPANIES REPORT DECLINES IN REVENUES AND RIDERSHIP DURING SECOND QUARTER OF 1983

Operating revenues and ridership of the Nation's ten largest bus companies declined during the second quarter of 1983, compared to the same period of 1982, according to a report released today by the Interstate Commerce Commission's Bureau of Accounts.

Today's report compares the earnings of the ten largest intercity bus companies for the second quarter and twelve months ending June 30, 1983 with the corresponding periods of 1982. The ten companies account for about 80% of the total revenues generated by approximately 40 Class I intercity bus companies.

A comparison of second quarter operations reveals that:

.... Operating revenues decreased 6.7 percent to $265.9 million as revenue passengers carried declined 12.9 percent.

.... Net carrier operating income increased $945 thousand to $7.9 million, as Greyhound Lines alone achieved a $3.3 million improvement. In contrast, the eight Trailways System carriers, as a group, reported a $2.3 million decrease.

.... Total net income decreased 9.8 percent to $8.8 million.

A comparison of results for the 12-month periods shows that:

.... Operating revenues decreased 4.7 percent to almost $1.1 billion, as revenue passenger carried declined 4.4 percent.

.... Net carrier operating income fell $25.6 million to $7.7 million. Greyhound Lines and the eight Trailways System carriers, as a group, reported declines of $16.7 million and $9.1 million respectively.

.... Net income for all carriers dropped $21.4 million or 54.9 percent to $17.6 million. Greyhound Lines reported an $18.7 million decrease.

(more)

.... Rate of return on shareholders' equity less intangible property for all carriers declined to 3.67 percent from 8.12 percent.

This report is based primarily upon quarterly reports submitted by the carriers to the ICC, and these reports have not been verified by the Commission.

Copies of this report can be obtained from the Office of the Secretary, Publications Room B-221, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 275-7833.

ICC

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS
WASHINGTON, D.C. 20423

LARGE CLASS I MOTOR CARRIERS OF PASSENGERS SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 1 OF 3

CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Passengers Carried 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Passengers Carried 3/	Operating Ratio 4/ (Percent)	Return on Equity 5/ (Percent)
Total All Carriers6/....................	1983	$265,892	$7,929	$8,826	13,690	$1,088,199	$ 7,701	$17,583	60,810	99.3	3.67
	1982	284,892	6,984	9,788	15,715	1,142,238	33,280	38,973	63,598	97.1	8.12
INDIVIDUAL CARRIER DATA											
Carolina Coach Co........................	1983	6,717	1,319	657	461	27,047	4,720	2,634	2,023	82.5	20.21
	1982	6,890	1,311	666	533	27,158	4,466	2,404	2,158	83.6	19.09
Greyhound Lines, Inc....................	1983	198,333	3,029	5,347	10,100	827,023	4,080	17,826	45,728	99.5	5.25
	1982	213,093	(241)	5,352	11,711	868,433	20,823	36,503	48,478	97.6	10.71
TRAILWAYS SYSTEM CARRIERS											
American Bus Lines, Inc.................	1983	10,534	(302)	(47)	428	40,443	(4,786)	(2,391)	1,724	111.8	0
	1982	11,941	606	16	493	45,712	(2,690)	(1,563)	1,750	105.9	0
Safeway Trails, Inc.....................	1983	8,275	(258)	(318)	821	32,016	(2,671)	(1,699)	3,342	108.3	0
	1982	7,534	51	37	716	27,053	(4,861)	(2,855)	2,484	118.0	0
Trailways Bus System, Inc...............	1983	9,211	1,155	498	437	36,269	2,412	251	1,862	93.4	4.63
	1982	9,789	1,767	758	515	38,873	6,084	1,795	2,076	84.4	42.48

SHEET 2 OF 3

LARGE CLASS I MOTOR CARRIERS OF PASSENGERS SELECTED EARNINGS DATA
(000 OMITTED)

CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Passengers Carried 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Passengers Carried 3/	Operating Ratio 4/ (Percent)	Return on Equity 5/ (Percent)
Trailways, Inc. 7/........................	1983	$12,504	$ 536	$ 1,972	488	$ 47,889	$ (815)	$2,799	2,071	101.7	3.30
	1982	13,810	299	1,982	580	53,233	5,071	2,838	2,255	90.5	3.42
Trailways Southeastern Lines, Inc........	1983	4,418	496	63	255	17,461	952	(1,430)	1,134	94.5	0
	1982	4,854	660	91	314	18,864	418	(511)	1,214	97.8	0
Trailways Southern Lines, Inc............	1983	7,596	1,146	433	321	28,683	3,204	1,150	1,332	88.8	32.18
	1982	8,201	1,902	822	374	30,628	4,513	991	1,499	85.3	56.02
Trailways Tamiami, Inc..................	1983	4,629	466	106	214	17,190	91	(1,113)	898	99.5	0
	1982	4,581	279	(66)	244	17,561	(377)	(264)	953	102.1	0
Trailways Tennessee Lines, Inc...........	1983	3,675	342	115	15[illegible]	14,178	514	(444)	696	96.4	0
	1982	4,199	350	130	235	14,723	(167)	(365)	731	101.1	0
Total of the Eight Trailways System	1983	60,842	3,581	2,822	3,129	234,129	(1,099)	(2,877)	13,059	100.5	0
Carriers Shown Above..................	1982	64,909	5,914	3,770	3,471	246,647	7,991	66	12,962	96.8	0

Net Carrier Operating Income - Difference between carrier operating revenues and carrier operating expenses.
Net Income - Net income, after including fixed charges, non-operating income, income taxes, unusual or infrequent items, earnings attributable to discontinued segments, extraordinary items and cumulative effect of changes in accounting principles, but before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.
Revenue passengers carried includes intercity, local and suburban service, but not passengers carried in charter or special service.
Operating Ratio - Ratio of operating expenses to operating revenues.
Return on Equity - Ratio of net income to shareholders' equity, less intangible property, at end of previous calendar year. The symbol -0- indicates a deficit in net income and/or shareholders' equity.
The ten carriers listed are among the largest Intercity Class I U.S. Motor Carriers of Passengers based on revenues.
Net income and shareholders' equity reported by Trailways, Inc. have been adjusted for this report to exclude all non-operating income attributable to undistributed earnings and dividend income of six affiliated companies which are also separately shown in this report. This exclusion was made in order to avoid the double counting of the net income of American Buslines, Inc., Safeway Trails, Inc., Trailways Bus System, Inc., Trailways Southern Lines, Inc., Trailways Tamiami, Inc. and Trailways Tennessee Lines, Inc. No exclusion was made for Trailways Southeastern Lines, Inc. for the second quarter 1983 and the twelve months ended June 30, 1983 (partial exclusion only), because Trailways, Inc. during 1982, no longer included the net losses reported by this company as equity in earnings (losses) of affiliated companies. Trailways Southeastern's net losses are no longer included because Trailways, Inc.'s net investment in Trailways Southeastern was reduced to a zero book value due to continuing losses.

Net income (loss) reported by Trailways, Inc. with the Commission, which includes equity in the earnings (losses), of almost all its affiliated companies in accordance with the Commission's accounting regulations, is shown below and is also compared with net carrier operating income (loss) of Trailways, Inc., as reported to the Commission.

(000 OMITTED)

	Second Quarter		12 Months Ended June 30,	
	1983	1982	1983	1982
Net Income (loss)........	2,759	3,770	(2,019)	(4,081)
Net Carrier Operating Income (loss)..........	536	299	(815)	5,071

STATEMENT OF REESE H. TAYLOR, JR., CHAIRMAN
INTERSTATE COMMERCE COMMISSION
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTE
ON
THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

November 16, 1983

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission on the Household Goods Transportation Act of 1980 (the Act). While any final assessment of the Act's impact on carriers and shippers would be premature, we believe that, so far, the impact has been positive, and that substantial progress has been made in terms of fulfilling the purpose of Congress in enacting this legislation.

The Act's purpose, as set forth in the Declaration of Policy, was threefold: (1) reducing unnecessary regulation; (2) strengthening consumer remedies and protections and (3) establishing maximum carrier flexibility in pricing of service and meeting the needs of shippers. Today, we are reporting on the actions the Commission has undertaken to carry out these legislative objectives, and on the impact of the Act on shippers and the household goods industry. We will also comment on present trends and possible further developments in this industry.

I.C.C. IMPLEMENTATION

In accordance with the specific mandate in Section 6 of the Act, the Commission promptly reviewed and revised all of its operational regulations for household goods transportation in Ex Parte No. MC-19 (Sub-No. 36), Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations), 132 M.C.C. 599 (1981). On October 16, 1980, a rulemaking was instituted. Comments were received, modifications made, and final rules were served on March 11, 1981, to become effective on June 9, 1981. These rules were based on comments filed, the Commission's own experience with the industry in the past, and the input gathered at various public conferences the Commission held to solicit information on how to improve the agency's regulation. The rules were appealed to the Seventh Circuit of the U.S. Court of Appeals. The June 9th effective date was stayed by the Court until December 9, 1981, when a decision was issued upholding the rules and lifting the stay. The rules were reinstated by the Commission and became effective February 1, 1982.

Section 6 of the Act also directs the Commission to minimize its regulations and the paperwork required of the carriers to the maximum extent feasible, consistent with the protection of individual shippers. Accordingly, the Commission has eliminated many unnecessary regulations and has substantially reduced paperwork. For example, most annual performance reports and all notices of agency agreements have been eliminated. Also eliminated was the requirement for filing quarterly reports detailing instances where actual charges for a shipment were either more than 10 percent above or below the initial estimate. To further reduce regulatory burdens, the Commission eliminated 14 financial schedules in Annual Report Form M-H required of Class I and II household goods carriers. We believe that the elimination of these various reports will relieve the industry of an annual burden of nearly 44,000 work-hours, without lessening individual shipper protections. Additional carrier work-hour savings have resulted from the Commission's elimination of requirements that (1) carriers obtain signed receipts from shippers stating that they have received certain pre-move information; and (2) more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. It should be stressed that the requirements eliminated are those which we believe will reduce paperwork burdens without jeopardizing consumer protection.

The Commission continues its efforts to reduce regulation in implementing the Act. Recently, we reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding for a review of our household goods regulations in the light of the experience gained under our current rules. Comments from interested parties are now being sought on whether any of the present rules are burdensome, unnecessary, inadequate to protect shippers or otherwise inappropriate. Meanwhile, pursuant to the Act, the Commission is monitoring the operational activities of the household goods transportation industry. Last March, our Office of Compliance and Consumer Assistance (OCCA) instituted a monitoring program to ascertain the level of compliance by the industry with our operational regulations. The analysis of information received under the program is near completion.

Section 5 of the Act provides that each household goods carrier shall be responsible for all acts or omissions of its agents which relate to services performed for that carrier. Each carrier is to use diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services. The Commission issued a policy statement to remind household carriers that they are responsible for the actions of their agents.

Subsequently, one of the recommendations made by the General Accounting Office (GAO) in its June 10, 1983, report to Congress, entitled The Household Goods Moving Industry. Changes Since Passage of Regulatory Reform Legislation, was that the Commission periodically evaluate the various carriers' systems or activities to monitor the quality of their agents' service, rather than completely relying on self-regulation by the van lines. In commenting on a draft of the GAO report, the Commission indicated that a specific audit of the programs employed by the carriers to monitor their agents did not appear warranted, considering the substantial decline in complaints, which is discussed later in this statement. However, as the GAO report recognizes,[1] we stated that this facet of carrier operations would be included in our overall household goods monitoring program, and this action has now been taken. Approximately 25 percent of the program is devoted to eliciting information from 44 carriers of varying sizes concerning their monitoring of their agents. Areas involved in the study include the number and capacity of carrier personnel devoted primarily to administering and supervising the agency programs; the quality of carrier instruction in the area of pre-move information; and the extent to which documentary evidence in the carriers' possession demonstrates supervision over the acts and/or omissions of their agents. Depending on the conclusions drawn, we can then determine with what frequency successive periodic surveys should be conducted.

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[1] See page 39.

The Act provides that, in protecting consumers, the Commission may issue, where appropriate, reasonable performance standards for the transportation of household goods subject to the jurisdiction of the agency. The Commission has proposed such standards in Ex Parte No. MC-19 (Sub-No. 36A), and comments have been filed. The Commission expects to soon reach a final decision in this proceeding.

Section 7 of the Act allows household goods carriers to establish programs to settle disputes with shippers. Such programs must be approved by the Commission and meet certain statutory requirements. Under the programs, claims would be presented before an impartial arbitrator. Most of the major carriers and many small carriers have given notice of their willingness to participate in dispute resolution programs utilizing arbitration. The Movers' and Warehousemen's Association of America, Inc. and the American Movers Conference have Commission-approved programs which are administered by the American Arbitration Association - an independent nongovernmental organization. The Commission believes that the implementation and acceptance of settlement dispute programs will result in fewer complaints and less Commission involvement. For example, under the American Movers Conference Dispute Settlement Program, 45 carriers are participating members. Most of the major movers belong to this program. From February 1, 1982, to September 1, 1983, 122 requests for arbitration were received from shippers. To date, 82 of these requests have been resolved through mediation or arbitration, thus demonstrating the ability of the parties to settle their differences without resort to the courts or the Commission.

With respect to the second goal of Congress, strengthening consumer remedies and protections, the Commission adopted rules requiring that, (1) improved, easy-to-read pre-move information be distributed to inform shippers of their rights and responsibilities; (2) shippers be fully and accurately informed of the existence and use of claims dispute resolution programs; (3) all carriers establish specific customer complaint and inquiry handling programs; (4) shippers be permitted to observe any weighing of a shipment; (5) shippers be notified of impending service delays; and (6) carriers continue to permit shippers to obtain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a non-binding estimate, and to have at least 30 days to pay any balance due. As stated earlier, the Commission has recently reopened the Ex Parte No.

MC-19 (Sub-No. 36) proceeding to review the need for changes in current rules, if warranted.

IMPACT OF ACT ON THE INDUSTRY

The third legislative objective calls for carrier flexibility in pricing of service. A wide variety of new price and service options have emerged. Various forms of discounts and diverse service plans have become widespread, and many carriers have entered into negotiated contracts.[2] Binding estimate programs are offered by a number of household goods carriers. These programs may be used to meet competition and to penetrate new markets, thereby providing discounts to individual C.O.D. shippers as well as corporate accounts.

The offering of guaranteed service dates and liquidated damages to the shipper in the event of delayed service is becoming a common practice. Generally, carriers who offer such guarantees provide for compensation at the rate of $100 to $125 for each day a shipment is delayed in delivery or pickup. Carriers are also developing programs designed to improve customer relations, such as offering post-move assistance to families settling in new communities.

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[2] ICC grants of contract carrier authority to transport household goods for corporate shippers nationwide were upheld by the U.S. Court of Appeals for the Fifth Circuit in _Global Van Lines, Inc._ v. _I.C.C._, 704 F.2d 829 (5th Cir. 1983).

All of the major carriers are offering what is generally referred to as full value liability protection. This is an added option, offered at an additional charge, which differs from the manner in which carriers customarily assume liability for loss and damage. Prior to offering this option, the liability of a carrier was generally limited, with respect to each article in a shipment, to a maximum of the actual cash value of each article as of the date the carrier received it for transportation. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement cost, with the result that, if this option is selected, the shipper will be eligible to receive either a new piece of furniture or be paid an amount sufficient to purchase a new piece of furniture to replace the one that was destroyed.

Another option relating to liability was approved in No. 38752, Petition For Declaratory Order on Deductibles in Household Goods Released Rates, served March 23, 1982. In this proceeding, the Commission interpreted 49 U.S.C. 10730 to permit motor and household goods carriers to limit their liability by publishing released rate provisions that include deductible clauses. These provisions typically produce reduced rates for the shipper. In effect, the shipper is given more flexibility in choosing the amount of insurance it wishes the carrier to provide. This decision was upheld by the U.S. Court of Appeals for the Second Circuit on June 13, 1983.[3]

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[3] Shippers National Freight Claims Council, Inc. v. ICC, Civil No. 80-4343, U.S.C.A. 2nd Cir. (1983).

Another objective of the Act was to improve the financial condition of the industry. The most recent data released by the ICC's Bureau of Accounts show that earnings of the Nation's largest household goods carriers for the twelve months ending June 30, 1983, improved, compared to the same period of the previous year. This report (attached as Appendix 1) also compares the revenues, earnings and traffic volume for the 15 largest household goods carriers for the quarters ending June 30, 1983, and June 30, 1982.

A comparison of results for the twelve months ending June 30, 1983, and June 30, 1982, reveals the following:

- Operating revenues declined 1.7 percent to $1.5 billion, as revenue tons hauled decreased 5.2 percent.
- Net carrier operating income increased $3.7 million or 10.4 percent to $39.8 million.
- Operating ratio (ratio of operating expenses to operating revenues) declined slightly (improved) to 97.4 percent from 97.7 percent.
- Net income increased 13.5 percent, to $22.8 million from $20.1 million.*
- Rate of return on shareholders' equity, less intangible property increased to 15.93 percent from 15.11 percent.*

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* These figures exclude North American Van Lines, since net income and return on equity reported by North American include its substantial general freight operations.

A comparison of the second quarter operations shows that:

- Operating revenues increased 1.7 percent to $397.4 million and revenue tons hauled increased 2.6 percent.
- Net carrier operating income decreased $251 thousand to $9.7 million, as North American Van Lines alone reported a $2.4 million decline. However, the total operating income of the other 14 carriers increased about $2.1 million.
- Net income (excluding North American) increased to $5 million from $4.1 million.

The increase in operating revenues in the second quarter of 1983 represents the first year-to-year quarterly increase in revenues for the 15 largest household goods carriers since the fourth quarter of 1981.

Regarding motor carriers of property in general, a comparison of the previously-discussed earnings data for the 15 largest household goods carriers with the earnings data of the 100 largest motor carriers of property (Appendix 2) shows that the household goods carriers reported a lesser proportionate increase in earnings for the twelve months ending June 30, 1983, versus the same period of 1982. Also, the household goods carriers reported a larger proportionate decline in revenues and a lower proportionate decrease in tonnage hauled as indicated in the following table:

Percent Increase or (Decrease)
12 Months Ending 6/30/83
Compared to 12 months ending 6/30/82

	15 Largest Household Goods Carriers	100 Largest Motor Carriers of Property [4]
Operating Revenues	(1.7)%	-- [1]
Revenue Tons Hauled	(5.2)	(5.8)
Net Carrier Operating Income	10.4	33.7
Net Income	13.5	20.8
Return on Shareholders' Equity	5.4[2]	22.7[3]

ASSESSMENT OF SHIPPER REACTION

The Commission has two primary sources of information which provide a basis for assessing shipper reaction to the innovations taking place in the transportation of household goods. These are: (1) shipper complaints; and (2) the Moving Service Questionnaire, which was developed by the Commission for completion by shippers subsequent to their moves as they appraise their carrier's performance. There has been a dramatic decrease in the number of complaints filed against household goods carriers since the enactment of the Act. In fiscal year 1981, there were 11,741 complaints filed, compared to 6,529 complaints filed in FY 1982--a reduction of about 45 percent. For fiscal year 1983, the sharp reduction continues, with a 43% reduction from the number received during the prior fiscal year. The reduction in complaints reflects shipper satisfaction with the improvements and diversity of service made possible by the recent legislation.

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[1] Decline is negligible - about two-tenths of one percent.

[2] Rose from 15.11 percent to 15.93 percent.

[3] Rose from 6.17 percent to 7.57 percent.

[4] Although the data for the 100 largest motor carriers of property include the data of the 7 largest household goods carriers, the deletion of these 7 carriers would generally have only an insignificant impact on the percent changes shown above.

Partially in response to a recommendation made in the previously cited GAO report to Congress and to insure that comprehensive information is available, the Commission's Office of Transportation Analysis (OTA) has designed a new study to determine the impact of both the Household Goods Act and the Motor Carrier Act on carriers and shippers of household goods. The study will utilize data from the carriers' annual reports and from questionnaires mailed to carriers (of all classes) and shippers. Specific areas of study will include, but not necessarily be limited to: types of operating authority and uses of that authority; pricing policies, such as discounts and contracts; various services, such as guaranteed pickup and delivery, full value claim protection and settlement; and carrier financial viability and the industry financial structure. A preliminary outline of the study is included as Appendix 3.

Our conclusions should include findings as to industry stability, competitiveness, flexibility of price and service options, degree of shipper satisfaction, and overall responses to the subject legislation. For the first time, this study will enable the Commission to provide detailed data on class III motor carriers of household goods. The estimated completion date for the study is June 1, 1984.

PRESENT TRENDS AND FUTURE DEVELOPMENTS

While it is still too soon to provide a definitive assessment of the Act, we are able to make some observations on current trends. There has been some new entry into the industry, and as the economy improves, we expect new entry to increase. Existing carriers have substantially expanded their operations in an effort to reduce costs through efficiency improvements. These cost reductions and the greater competition made possible by new entry will, of course, result in better service at less cost to the public.

We are also witnessing the development of a significant trend toward the use of contracts by household goods moving companies. As a marketing tactic, contract carriage appears advantageous, particularly insofar as innovative pricing strategies are concerned. Several recent Commission decisions may affect this trend. In Ex Parte No. MC-165, Exemption of Motor Contract Carriers From Tariff Filing Requirements, 48 FR 24386 (June 1, 1983), the Commission granted the exemption of tariff filing requirements to all motor contract carriers of property. Although this decision was initially stayed by the Court, the District of Columbia Circuit of the U.S. Court of Appeals has since lifted the stay on September 28, 1983, and the Commission's exemption order is now in effect. As a result, more common carriers may apply for contract carriage authority.

Recent proceedings involving pooling agreements between a household goods carrier and its agents should also be mentioned.

In No. MC-F-15004, Atlas Van Lines, Inc., et al. - Pooling Application, (not printed), decided July 15, 1983, Atlas Van Lines sought approval of a pooling arrangement with its agents to supplant an existing agreement which allowed the latter to hold unrestricted operating authority. Under the new plan, the agents would not be allowed to retain their broad authority. The Commission approved the application and found that Atlas was under no obligation to pool traffic with any carrier. Opponents of the application failed to rebut the statutory presumption that the new pooling plan was in the public interest.

In a related proceeding, No. MC-F-14784, Atlas Van Lines, Inc. - Pooling, 127 M.C.C. 799 (1983), the Commission determined that it lacked jurisdiction over an earlier proposal of Atlas to deal exclusively with non-carrier agents. The Commission found that this previously proposed policy of Atlas to deal only with non-carrier agents was not a pooling agreement requiring our prior approval under 49 U.S.C. §11342.

We will continue our effort to implement the Household Goods Transportation Act in accordance with Congressional intent. The Commission is dedicated to eliminating unnecessary regulations and encouraging flexible, responsive, and innovative pricing. We believe the industry, as well as the public, will be the beneficiaries. At present, the Act appears to be working well, to the benefit of both shippers and carriers. We will, of course, keep you apprised of further developments and will recommend additional legislative changes as they appear warranted.

This concludes my prepared remarks, and now, Mr. Chairman, I will be happy to answer any questions you may have.

Appendix 1

interstate commerce commission
icc news
12th & constitution avenue nw □ washington dc 20423

FOR RELEASE:
SEPTEMBER 16, 1983

(202) 275-7252
BROWN

NATION'S LARGEST MOVING COMPANIES REPORT INCREASED REVENUES AND TONNAGE HAULED DURING SECOND QUARTER OF 1983

Revenues and tonnage hauled by the Nation's 15 largest interstate moving companies increased during the second quarter of 1983, compared to the same period of 1982, according to a report issued today by the Interstate Commerce Commission's Bureau of Accounts.

The report compares the earnings of the 15 largest moving companies for the quarter and twelve months ending June 30, 1983, with the corresponding periods of 1982. These 15 carriers account for approximately 80 percent of the total revenues generated by Class I and II intercity household goods carriers.

North American Van Lines, Inc. is the only carrier in this report which also performs a substantial amount of general freight operations. In the report, the operating revenues, net carrier operating income, revenue tons hauled and operating ratio for North American reflect household goods operations only. However, net income and return on equity include both household goods and general freight operations in accordance with ICC reporting requirements. In order to make a better comparison of household goods operations, the data shown below for net income and return on equity excludes North American.

A comparison of second quarter results shows that:

... Operating revenues increased 1.7 percent to $397.4 million and revenue tons hauled increased 2.6 percent.

... Net carrier operating income decreased $251 thousand to $9.7 million as North American Van Lines alone reported a $2.4 million decline. However, the total operating income of the other 14 carriers increased about $2.1 million.

... Net income, which includes household goods services such as packing, crating and storage, (excluding North American) increased to $5 million from 4.1 million.

(MORE)

A comparison of results for the 12 month periods indicates that:

... Operating revenues declined 1.7 percent to $1.5 billion, as revenue tons hauled decreased 5.2 percent.

... Net carrier operating income increased $3.7 million or 10.4 percent to $39.8 million. The large gains reported by Aero-Mayflower ($2.3 million), Allied Van Lines ($2.2 million) and United Van Lines ($2.2 million) more than offset North American's $2.7 million decline.

... The operating ratio (ratio of operating expenses to operating revenues) declined slightly (improved) to 97.4 percent from 97.7 percent.

... Net income (excluding North American) increased 13.5 percent to $22.8 million.

... The rate of return on shareholders' equity, less intangible property (excluding North American), increased to 15.93 percent from 15.11 percent.

This report is based primarily upon quarterly reports submitted to the Commission. These figures have not been verified by the ICC.

Copies of this report can be obtained from the Office of Secretary, Publications Room B-221, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 275-7833.

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS
WASHINGTON, D.C. 20423

LARGE CLASS I HOUSEHOLD GOODS CARRIERS SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 1 OF 4

CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Total All Carriers, Excluding	1983	$328,638	$ 7,583	$ 4,998	589	$1,245,728	$24,459	$22,831	2,310	98.0	15.93
North American Van Lines, Inc.6/..	1982	326,351	5,457	4,138	585	1,278,580	18,062	20,124	2,479	98.6	15.11
Total All Carriers 7/..............	1983	397,425	9,711	8,006	706	1,549,170	39,837	38,540	2,852	97.4	14.04
	1982	390,864	9,962	10,985	688	1,576,110	36,091	47,118	3,008	97.7	16.67
INDIVIDUAL CARRIER DATA											
Aero-Mayflower Transit Co. 8/......	1983	51,686	2,097	1,276	97	195,258	6,173	3,834	319	96.8	17.63
	1982	49,870	1,767	1,327	97	194,892	3,849	3,373	345	98.0	18.59
Allied Van Lines, Inc..............	1983	78,008	1,137	1,096	126	281,007	823	2,701	516	99.7	16.29
	1982	73,010	199	561	116	287,729	(1,364)	1,676	557	100.5	9.21
American Red Ball Transit 8/.......	1983	5,596	(75)	(99)	18	24,215	352	300	75	98.5	14.56
	1982	5,679	(69)	(249)	14	25,254	508	170	57	98.0	8.03
Atlas Van Lines, Inc...............	1983	33,654	1,334	824	61	126,032	4,473	4,590	229	96.5	16.15
	1982	34,289	1,367	1,010	63	128,844	3,583	5,767	251	97.2	24.25

LARGE CLASS I HOUSEHOLD GOODS CARRIERS SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 2 OF 4

CARRIER AND YEAR	QUARTER ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Bekins Van Lines Co.8/....1983	$40,436	$ 785	$ 572	74	$159,333	$ 4,623	$ 3,652	270	97.1	15.37
1982	46,057	576	665	88	163,532	3,640	2,942	297	97.8	14.80
Burnham Van Services, Inc.1983	12,993	1,497	893	20	49,616	4,066	2,782	92	90.2	63.14
1982	12,340	1,328	564	23	45,041	5,130	2,330	95	88.6	23.85
Cartwright Van Lines, Inc.1983	2,698	(68)	(31)	5	12,688	117	16	24	99.1	1.68
1982	2,833	36	(12)	5	11,957	(25)	(32)	24	100.2	-0-
Global Van Lines, Inc.8/..1983	17,241	375	89	37	68,252	1,145	957	155	98.3	10.08
1982	16,764	291	(197)	35	69,170	1,040	422	160	98.5	5.01
Interstate Van Lines, Inc.1983	2,625	143	220	4	11,331	(2)	(16)	16	100.0	-0-
1982	2,323	381	438	4	10,278	437	652	12	95.7	68.53
National Van Lines, Inc...1983	4,227	13	(75)	7	16,187	(298)	(459)	26	101.8	-0-
1982	4,669	(10)	(76)	6	16,713	(108)	(197)	25	100.6	-0-
Neptune World Wide Moving.1983	5,428	(13)	(362)	7	18,512	511	179	28	97.2	4.09
	4,913	(77)	(152)	8	23,427	1,541	747	40	93.4	17.46
North American Van Lines,.1983	68,787	2,128	3,008	117	303,442	15,378	15,709	542	94.9	11.99
1982	64,513	4,505	6,847	103	297,530	18,029	26,994	529	93.9	18.06

LARGE CLASS I HOUSEHOLD GOODS CARRIERS SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 3 OF 4

CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Pan American Van Lines,...	1983	$ 3,451	$ 128	$ 60	11	$ 13,996	$ 619	$ 359	42	95.6	51.07
Inc.	1982	3,418	188	124	10	12,607	402	317	41	96.8	64.83
United Van Lines, Inc.8/..	1983	62,726	(70)	281	109	237,877	27	2,911	460	100.0	15.90
	1982	62,158	(698)	(81)	99	251,825	(2,165)	408	509	100.9	2.66
Wheaton Van Lines, Inc....	1983	7,867	300	254	13	31,424	1,030	1,025	58	96.7	9.38
	1982	8,028	178	216	17	37,311	1,594	1,541	66	95.7	15.39

1/ Net Carrier Operating Income - Difference between carrier operating revenues and carrier operating expenses.

2/ Net Income - Net income, after including fixed charges, non-operating income, income taxes, unusual or infrequent items, earnings attributable to discontinued segments, extraordinary items and cumulative effect of changes in accounting principles, but before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

3/ Revenue tons hauled reflects common and contract carrier service.

4/ Operating Ratio - Ratio of operating expenses to operating revenues.

5/ Return on Equity - Ratio of net income to shareholders' equity, less intangible property, at end of previous calendar year. The symbol -0- indicates a deficit in net income and/or shareholders' equity.

6/ North American Van Lines, Inc. conducts household goods and general freight operations, both of which are substantial in scope. In this report, the operating revenues, net carrier operating income, revenue tons hauled and operating ratio for North American reflect household goods operations only. Since the Commission's reporting requirements do not require an allocation of net income for carriers which provide dual service, the net income and return on equity for this carrier reflect both household goods and general freight operations. Consequently, this report shows composite data for all carriers excluding North American Van Lines so that a better comparison can be made of data from household goods operations. Operating revenues and net carrier operating income attributable to North American Van Lines' general freight operations which are sizeable were as follows:

	Quarter Ended		Twelve Months Ended	
	6/30/83	6/30/82	6/30/83	6/30/82
North American Van Lines, Inc.:				
Operating Revenues........................	$47,144	$40,079	$196,407	$191,857
Net Carrier Operating Income..............	1,241	1,766	(496)	5,137

7/ The 15 carriers listed are generally among the largest Interstate Class I U.S. Household Goods Carriers based on revenues.

8/ Operating revenues, net carrier operating income and operating ratio for Aero-Mayflower Transit Co., Inc., American Red Ball Transit, Bekins Van Lines Co., Global Van Lines, Inc. and United Van Lines, as shown above, reflect household goods operations only, but revenue tons hauled, net income and return on equity represent the results from all their operations including the transportation of general freight and household goods as well as income from household goods services (packing, crating, storage, etc.)

Appendix 2

interstate commerce commission
icc news
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FOR RELEASE:
OCTOBER 3, 1983

(202) 275-7252
BROWN

NATION'S LARGEST TRUCKING COMPANIES REPORT LARGE GAINS IN REVENUES AND EARNINGS FOR THE SECOND QUARTER OF 1983

Revenues, net carrier operating income and net income of the Nation's largest trucking companies increased substantially in the second quarter of 1983, compared to the same period of 1982, according to a report released today by the Interstate Commerce Commission's Bureau of Accounts.

The report compares the earnings of 100 of the largest common carrier trucking companies for the quarter and twelve months ending June 30, 1983, with the corresponding periods in 1982. This report excludes the two United Parcel Service (UPS) carriers, whose operations are dissimilar and highly specialized, i.e., pickup and delivery of small packages. The 100 carriers in this report account for about 44 percent of the total revenues generated by approximately 3,000 Class I and II regulated trucking companies.

A comparison of the second quarter operations reveals that:

... Operating revenues increased 3.7 percent to about $4 billion.

... Net carrier operating income rose substantially, by 80.6 percent to $219.6 million.

... Net income also improved significantly, by 78.2 percent to $121.5 million.

... Revenue tons hauled declined 3.4 percent.

... Of these 100 carriers, 62 reported increases in operating revenues, 71 reported improved net carrier operating income, 65 reported improved net income, and 52 reported increases in tonnage hauled.

... This increase in revenues and earnings, reflecting the pick-up in the Nation's economy, represents a continuation of the improvement shown in the first quarter of 1983 compared to the first quarter of 1982.

... These improvements in earnings in the first and second quarters of 1983 are the first year to year quarterly increases in earnings for the 100 largest trucking companies since the second quarter of 1981.

A comparison of the results for the 12-month periods shows that:

... Operating revenues remained about the same, approximately $15.6 billion, as revenue tons hauled declined 5.8 percent.

... Net carrier operating income increased 33.7 percent to $430.8 million.

... Net income increased 20.3 percent to $220.5 million.

... The operating ratio (ratio of operating expenses to operating revenues) decreased (improved) to 97.2 percent from 97.9 percent.

... Rate of return on shareholders' equity increased to 7.57 percent from 6.17 percent.

The net income discussed above and used in the computation of return on shareholders' equity represents net income before any net extraordinary charges for the write-down of operating rights.

This report is based primarily upon quarterly reports submitted to the Commission. The figures have not been verified by the ICC.

Copies of this report can be obtained from the Office of the Secretary, Publications Room B-229, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 275-7833.

ICC

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS
WASHINGTON, D.C. 20423

SHEET 1 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Eastern District Total (33)......	1983	$1,639,293	$ 99,971	$ 59,064	15,814	$6,330,294	$225,078	$136,984	62,139	96.4	9.93
	1982	1,558,454	58,420	40,822	17,079	6,227,494	149,206	113,393	65,410	97.6	8.21
Southern District Total (22).....	1983	896,390	57,240	35,196	10,286	3,379,799	105,550	48,939	39,119	96.9	8.52
	1982	819,854	35,035	15,358	9,853	3,299,886	87,033	30,606	39,238	97.4	5.54
Western District Total (45)......	1983	1,492,989	62,430	27,236	14,910	5,857,966	100,195	34,538	58,553	98.3	3.61
	1982	1,506,424	28,176	11,988	15,525	6,085,469	86,082	39,225	65,039	98.6	3.79
Total All Carriers 6/..........	1983	4,028,672	219,641	121,496	41,030	15,568,059	430,823	220,461	159,811	97.2	7.57
	1982	3,884,732	121,631	68,168	42,457	15,612,849	322,321	183,224	169,687	97.9	6.17
INDIVIDUAL CARRIERS DATA EASTERN DISTRICT											
A-P-A Transport Corp...............	1983	21,688	4,778	2,358	108	83,184	15,262	7,311	424	81.7	28.00
	1982	20,397	3,876	1,795	105	78,727	12,880	6,102	422	83.6	29.18
Aero Mayflower Transit Co..........	1983	53,977	2,138	1,276	97	204,208	6,083	3,834	377	97.0	17.63
	1982	52,257	1,886	1,327	97	203,375	4,136	3,373	394	98.0	18.59
Allied Van Lines, Inc.............	1983	78,008	1,137	1,096	126	281,007	823	2,701	516	99.7	16.29
	1982	73,010	199	561	116	287,729	(1,364)	1,676	557	100.5	9.21
Associated Truck Lines, Inc.......	1983	49,792	1,199	(1,614)	488	192,665	1,886	(1,416)	1,915	99.0	-0-
	1982	47,832	(281)	(159)	497	178,567	(4,658)	(1,301)	1,849	102.6	-0-
Atlas Van Lines, Inc..............	1983	33,654	1,334	824	61	126,032	4,473	4,590	229	96.5	16.15
	1982	34,289	1,367	1,010	63	128,844	3,583	5,783	251	97.2	24.32

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 2 OF 13

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Bekins Van Lines, Inc.	1983	$41,838	$ 710	$ 572	74	$165,320	$ 4,209	$ 3,652	301	97.5	15.37
	1982	47,690	565	665	88	170,461	3,506	2,942	325	97.9	14.80
F.J. Boutell Driveaway Co.	1983	3,612	405	240	24	29,034	627	455	245	97.8	3.11
	1982	15,062	1,100	(154)	133	52,722	1,672	489	451	96.8	3.38
Branch Motor Express Co.	1983	30,817	(954)	(1,324)	310	121,875	(6,945)	(6,593)	1,222	105.7	-0-
	1982	34,446	(234)	(1,091)	340	142,045	(7,803)	(7,793)	1,476	105.5	-0-
C&J Commercial Driveaway, Inc.	1983	16,132	1,698	859	155	54,116	3,076	1,371	539	94.3	17.42
	1982	10,797	703	569	120	41,731	95	(287)	439	99.8	-0-
Central Transport, Inc.	1983	52,387	5,258	4,373	1,173	165,372	6,717	5,612	3,928	95.9	59.13
	1982	36,303	2,490	2,808	880	128,700	(3,012)	(402)	3,111	102.3	-0-
Chemical Leaman Tank Lines	1983	37,034	(142)	(336)	1,467	143,303	(3,334)	(3,383)	5,386	102.3	-0-
	1982	38,777	511	(263)	(1,359)	158,981	1,764	(1,178)	5,458	98.9	-0-
Coastal Tank Lines	1983	14,738	(41)	(426)	565	60,356	(530)	(3,319)	3,250	100.9	-0-
	1982	16,886	350	(150)	782	72,040	1,968	(1,111)	3,700	97.3	-0-
Commercial Carriers, Inc.	1983	37,582	2,992	1,462	576	115,386	5,674	4,711	1,859	95.1	19.93
	1982	26,116	1,793	1,020	447	95,933	5,286	2,948	1,800	94.5	13.73
Huff Truck Line, Inc.	1983	13,516	343	233	185	51,834	(1,698)	(1,975)	684	103.3	-0-
	1982	14,382	180	(37)	189	56,427	(1,033)	(1,292)	757	101.8	-0-

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 3 OF 13

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
EASTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenue	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Hall's Motor Transit Company......	1983	$45,070	$ (813)	$(1,024)	289	$210,007	$ (6,458)	$(8,647)	1,661	103.1	-0-
	1982	50,990	(1,761)	(1,625)	442	232,467	(12,160)	(9,677)	2,182	105.2	-0-
Holland Motor Express, Inc.........	1983	17,952	2,227	1,257	152	62,530	5,147	3,107	545	91.8	18.19
	1982	15,200	1,414	835	144	57,826	2,710	2,649	613	95.3	13.15
Holmes Transportation, Inc.........	1983	14,218	175	233	160	55,006	464	937	638	99.2	7.80
	1982	13,735	(249)	(245)	161	54,878	(722)	(501)	658	101.3	-0-
IMFS, Inc..........................	1983	45,503	(2,704)	(3,676)	278	201,836	(14,952)	(19,082)	1,644	107.4	-0-
	1982	58,342	(1,505)	(2,421)	608	244,699	(9,079)	(6,927)	2,613	103.7	-0-
Jones Transfer Company...........	1983	14,460	1,150	1,008	300	50,705	996	626	1,038	98.0	9.20
	1982	12,417	276	10	285	49,497	(1,895)	(2,012)	1,069	103.8	-0-
M&G Convoy, Inc....................	1983	19,266	574	376	229	63,335	(58)	91	716	100.1	0.93
	1982	17,361	926	548	186	61,333	3,273	1,579	653	94.7	16.27
Matlack, Inc.......................	1983	39,766	1,260	296	1,723	150,538	1,482	(1,197)	6,743	99.0	-0-
	1982	39,259	1,009	(208)	1,748	175,540	9,879	3,235	8,041	94.4	7.67
National Freight, Inc..............	1983	19,804	237	672	334	81,008	1,058	2,319	1,264	98.7	38.90
	1982	17,869	(569)	(270)	271	76,086	(870)	(723)	1,519	101.1	-0-
No. American Van Lines, Inc.......	1983	115,931	3,369	3,008	551	499,849	14,883	15,709	2,249	97.0	11.99
	1982	108,592	6,271	6,847	459	489,387	23,226	26,994	1,966	95.3	18.06

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Nu-Car Carriers, Inc..............	1983	$ 25,607	$ 1,908	$ 1,544	555	$ 83,877	$ 2,166	$ 821	1,656	97.4	22.40
	1982	25,772	2,021	1,487	502	73,931	2,914	309	1,386	96.1	9.02
Oneida Motor Freight, Inc.........	1983	13,842	412	342	101	51,345	178	284	415	99.7	4.76
	1982	13,211	445	505	1,193	48,375	(1,425)	(620)	497	102.9	-0-
R-W Service System, Inc...........	1983	8,742	571	359	347	36,712	305	(459)	1,385	99.2	-0-
	1982	15,976	400	226	492	73,141	(553)	(1,888)	2,173	100.8	-0-
Preston Trucking Co., Inc.........	1983	67,576	4,388	2,440	649	238,852	8,877	5,991	2,273	96.3	8.97
	1982	55,437	2,987	1,964	518	205,898	7,487	5,585	2,085	96.4	8.01
Red Star Express Lines............	1983	24,177	3,227	1,405	170	92,998	9,154	3,549	680	90.2	10.27
	1982	22,241	1,862	1,053	174	84,245	4,352	3,099	694	94.8	8.54
Refiners Transport & Terminal.....	1983	11,857	315	(8)	1,469	47,650	(160)	(2,693)	5,978	100.4	-0-
	1982	13,250	215	162	1,641	52,420	1,870	964	5,089	96.4	6.18
Roadway Express, Inc..............	1983	282,637	31,095	22,819	1,099	1,173,668	102,797	84,213	4,733	91.2	17.51
	1982	273,461	22,671	19,033	1,173	1,117,718	80,821	69,237	4,804	92.8	16.59
St. Johnsbury Truck Co., Inc......	1983	47,194	3,464	1,522	358	189,264	12,644	6,717	1,471	93.3	24.19
	1982	36,475	2,154	873	301	145,299	5,092	4,566	1,224	96.5	10.08
Smiths Transfer Corporation.......	1983	79,481	3,407	1,996	538	290,039	3,218	938	1,974	98.9	1.73
	1982	68,733	(1,183)	(524)	477	277,131	972	(683)	1,962	99.6	-0-

SHEET 5 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

	QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Yellow Freight System, Inc.........1983	$ 261,435	$24,854	$14,902	1,103	$ 957,303	$ 47,022	$ 26,209	4,201	95.1	12.13
1982	231,869	6,531	4,671	1,008	911,341	16,295	8,258	4,392	98.2	3.79
Total Eastern Carriers (33).......1983	1,639,293	99,9[illegible]	59,064	15,814	6,330,294	225,078	136,984	62,139	96.4	9.93
1982	1,558,454	58,420	40,822	17,079	6,227,494	149,207	113,393	65,410	97.6	8.21
SOUTHERN DISTRICT										
AAA Cooper Transportation........1983	14,915	1,600	1,214	142	54,624	1,217	(194)	536	97.8	-0-
1982	13,300	1,718	1,530	146	49,114	4,253	2,669	543	91.3	25.98
Alterman Transport Lines, Inc....1983	10,852	103	31	109	44,340	1,022	18[illegible]	473	97.7	1.29
1982	11,052	169	109	118	45,275	1,367	876	488	97.0	6.15
Bowman Transportation, Inc.......1983	38,371	1,162	1,366	455	135,986	(2,264)	106	1,583	101.7	0.20
1982	32,407	172	421	361	140,328	(1,205)	(356)	1,595	100.9	-0-
Brown Transport Corporation......1983	38,404	3,575	3,129	568	142,290	8,323	6,108	2,048	94.2	55.11
1982	34,267	2,472	1,841	454	139,592	6,930	4,622	1,889	95.0	35.09
Carolina Freight Carriers Corp...1983	74,715	6,187	3,024	447	293,569	18,023	8,958	1,838	93.9	23.37
1982	61,770	3,279	1,770	416	258,475	10,453	5,057	1,820	96.0	15.08

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 6 OF 13

DISTRICT, CARRIER AND YEAR SOUTHERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Mason & Dixon Lines, Inc.	1983	$ 36,763	$ 806	$ 345	392	$149,324	$ (5,193)	$ (7,639)	1,510	103.5	-0-
	1982	35,166	(542)	(1,184)	334	163,997	(792)	(2,968)	1,570	100.5	-0-
McLean Trucking Company	1983	133,370	3,920	5,791	726	496,277	(12,244)	(2,241)	2,729	102.5	-0-
	1982	129,209	(33)	(1,925)	692	533,768	(17,275)	(13,863)	2,916	103.2	-0-
Melton Truck Lines, Inc.	1983	11,177	236	100	310	45,834	305	521	1,340	99.3	5.45
	1982	12,940	10	35	340	49,219	(756)	(124)	1,253	101.5	-0-
Mercury Motor Express, Inc.	1983	12,447	(612)	(338)	140	46,968	(3,588)	(1,904)	526	107.6	-0-
	1982	12,682	(253)	(117)	157	47,858	(1,236)	(465)	614	102.6	-0-
Miller Transporters, Inc.	1983	12,392	175	(92)	959	48,410	675	(457)	3,807	98.6	-0-
	1982	12,569	709	108	1,023	50,110	1,774	(941)	4,027	96.5	-0-
Old Dominion Freight Lines, Inc. ...	1983	33,644	2,137	1,288	508	120,211	5,905	2,699	1,872	95.1	21.16
	1982	26,209	1,672	912	440	97,826	1,869	251	1,695	98.1	2.01
Overnite Transportation Company ...	1983	83,506	14,066	7,764	741	307,178	42,183	23,709	2,804	66.3	18.17
	1982	73,217	11,095	5,977	675	289,197	33,804	18,398	2,803	88.3	15.77
Pilot Freight Carriers, Inc.	1983	48,999	(1,106)	(1,601)	405	169,851	(7,689)	(9,131)	1,365	104.5	-0-
	1982	39,530	(1,253)	(1,162)	295	151,637	(5,487)	(4,057)	1,125	103.6	-0-
Poole Truck Line, Inc.	1983	16,938	2,477	1,875	639	60,615	6,517	3,926	2,325	89.2	30.32
	1982	14,815	1,815	1,126	625	52,396	3,638	554	2,277	93.1	4.22

SHEET 7 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
DISTRICT, CARRIER AND YEAR SOUTHERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
RTC Transportation, Inc.	1983	$ 38,424	$ 1,448	$ 501	704	$ 156,640	$ 6,393	$ 2,269	2,731	95.9	17.20
	1982	37,356	1,445	494	642	146,767	4,891	1,716	2,378	96.7	14.78
Ryder Truck Lines, Inc.	1983	170,653	9,982	5,056	1,291	641,577	19,024	8,329	5,286	97.0	12.77
	1982	160,486	6,234	2,878	1,403	630,351	20,927	9,513	5,652	96.7	14.19
Saia Motor Freight Line, Inc.	1983	11,613	1,663	949	130	46,310	5,354	3,207	487	88.4	18.20
	1982	12,928	1,954	1,179	158	50,004	6,007	2,921	591	88.0	20.22
Southeastern Freight Lines	1983	14,738	2,168	2,094	170	53,019	5,304	4,939	614	90.0	47.08
	1982	13,159	1,069	950	157	52,578	2,193	1,584	680	95.8	15.29
The Motor Convoy, Inc.	1983	17,170	189	(5)	756	58,977	82	910	2,198	99.9	59.32
	1982	15,369	119	(84)	675	58,371	1,552	835	2,276	97.3	35.91
Thurston Motor Lines, Inc.	1983	23,510	1,689	84	275	98,356	4,319	(648)	1,267	95.6	-0-
	1982	23,349	887	(620)	308	94,883	4,323	(1,098)	1,237	95.4	-0-
Transus, Inc. 7/	1983	24,161	2,221	1,321	227	90,723	4,439	2,357	943	95.1	10.55
	1982	22,213	1,230	638	255	89,657	5,064	2,542	1,078	94.4	19.41
Watkins Motor Lines	1983	29,628	3,146	1,292	184	118,720	7,446	2,928	757	93.7	24.71
	1982	25,698	1,067	452	171	108,475	4,739	2,940	731	95.6	26.79
Total Southern Carriers (22)	1983	896,390	57,240	35,196	10,286	3,379,799	105,550	48,939	39,119	96.9	8.52
	1982	819,854	35,035	15,358	9,853	3,299,886	87,033	30,606	39,238	97.4	5.54

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 8 OF 13

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
WESTERN DISTRICT		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
ABF Freight System, Inc.	1983	$ 87,347	$ 1,839	$ 1,247	527	$ 339,551	$ (521)	$ (10,684)	2,049	100.2	-0-
	1982	69,640	663	(134)	451	282,103	(177)	(1,909)	1,868	100.1	-0-
East Texas Motor Frt.	1983	-0-	-0-	-0-	-0-	27,740	(6,163)	1,092	172	122.2	-0-
Lines, Inc. 8/	1982	47,641	(3,189)	(3,036)	292	194,241	(15,415)	(9,858)	1,298	107.9	-0-
Advance Transportation Co.	1983	14,740	510	321	152	51,868	1,039	223	538	98.0	5.67
	1982	13,085	436	226	162	49,239	869	97	639	98.2	2.09
American Frt. System, Inc.	1983	68,733	4,237	2,314	395	256,219	5,843	3,399	1,558	97.7	11.28
	1982	61,105	2,004	1,425	380	234,983	(206)	334	1,565	100.1	1.11
BN Transport, Inc.	1983	16,923	(824)	(898)	122	67,495	(2,918)	(2,688)	445	104.3	-0-
	1982	17,784	(68)	250	126	69,063	(420)	52	508	100.6	0.85
C. & H. Transportation Co., Inc.	1983	25,143	869	1	332	103,821	4,681	1,431	1,295	95.5	5.57
	1982	29,513	1,740	427	322	136,821	11,197	4,931	1,470	91.8	16.99
C.W. Transport, Inc.	1983	23,180	891	497	262	85,008	(827)	(224)	942	101.0	-0-
	1982	22,022	(168)	204	236	92,066	(57)	(171)	1,037	100.1	-0-
Campbell 66 Express	1983	19,725	685	(40)	152	77,947	918	1,350	585	98.8	7.41
	1982	19,228	838	437	148	84,199	1,805	(423)	669	97.9	-0-
Central Freight Lines, Inc.	1983	44,646	2,127	992	588	178,307	3,334	5,131	2,327	98.1	8.08
	1982	48,237	2,113	1,447	666	199,762	10,147	7,331	2,902	94.[illegible]	12.65

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 9 OF 13

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Chemical Express Carriers, Inc....	1983	$ 11,368	$ 749	$ 85	1,304	$ 46,482	$ 1,884	$ (264)	4,753	95.9	-0-
	1982	15,477	576	42	1,654	62,141	1,196	731	6,541	98.1	-0-
Churchill Truck Lines, Inc........	1983	18,066	1,678	716	126	63,625	3,008	1,739	464	95.3	22.98
	1982	14,971	577	486	113	56,640	95	348	463	99.8	4.92
Consolidated Freightways Corp.....	1983	282,412	28,892	14,722	1,109	1,073,029	75,730	40,554	4,398	92.9	12.24
	1982	266,096	18,480	13,212	1,136	1,018,433	66,658	50,415	4,401	93.5	16.30
Crete Carrier Corporation.........	1983	15,977	1,009	931	281	61,622	3,462	2,494	1,060	94.4	27.60
	1982	14,384	1,146	755	247	57,447	3,281	2,188	970	94.3	31.73
CRST, Inc.........................	1983	17,016	872	629	310	69,926	1,132	1,343	1,218	98.4	17.86
	1982	18,078	1,122	631	328	68,946	2,565	1,070	1,330	96.3	16.94
FFE Transportation Service........	1983	14,020	454	236	204	55,855	596	479	675	98.9	8.14
	1982	14,037	118	144	156	58,803	(1,871)	(509)	707	103.2	-0-
Garrett Freightlines, Inc.........	1983	41,948	2,005	7	283	158,926	6,948	4,928	1,094	95.6	18.15
	1982	37,194	1,043	610	262	148,430	5,741	4,306	1,005	96.1	11.28
Global Van Lines, Inc.............	1983	17,617	388	89	37	69,295	1,257	957	155	98.2	10.08
	1982	16,927	294	(197)	35	69,831	1,154	315	160	98.3	3.74
Graves Truck Lines................	1983	17,466	715	(383)	130	67,891	473	(1,302)	518	99.3	-0-
	1982	16,101	(644)	(418)	127	68,619	(2,619)	(1,667)	583	103.8	-0-

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 10 OF 13

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
WESTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Groendyke Transportation, Inc.....	1983	$ 13,765	$ 662	$ 345	877	$ 54,639	$ 2,209	$ 1,214	3,517	96.0	11.12
	1982	14,347	334	139	937	60,031	2,162	1,592	3,823	96.4	16.31
Illinois-Calif. Express, Inc......	1983	20,782	(509)	(874)	141	89,851	(1,982)	1,058	591	102.2	7.06
	1982	23,156	(524)	(964)	145	106,449	(618)	(2,516)	668	100.6	-0-
IML Freight, Inc..................	1983	27,908	(1,316)	(1,869)	127	125,910	(6,701)	(9,667)	570	105.3	-0-
	1982	31,821	(2,658)	(3,506)	145	147,927	(7,053)	(11,119)	678	104.8	-0-
International Transport, Inc......	1983	21,818	138	90	173	92,917	1,235	277	745	98.7	1.18
	1982	31,456	1,949	745	251	132,538	5,687	2,009	925	95.7	8.61
Jones Truck Lines, Inc............	1983	36,942	2,731	1,405	395	144,309	8,824	5,257	1,543	93.9	10.83
	1982	28,574	1,968	1,024	306	110,351	6,958	4,906	1,179	93.7	10.26
Lee Way Motor Freight, Inc........	1983	30,895	(4,439)	(2,259)	237	176,566	(25,343)	(12,522)	1,086	114.4	-0-
	1982	45,055	(4,400)	(2,205)	279	203,016	(16,660)	(7,356)	1,246	108.2	-0-
Lynden Transport, Inc.............	1983	15,565	1,559	1,045	265	62,116	6,760	2,989	1,351	89.1	15.12
	1982	18,832	1,503	1,276	210	67,078	6,963	6,618	1,457	89.6	34.21
Merchants Fast Motor Lines, Inc...	1983	22,936	1,097	444	235	92,417	6,966	3,258	929	92.5	37.95
	1982	25,184	2,204	1,088	258	106,043	10,543	5,255	1,105	90.1	58.72
Mid West Coast Transport, Inc.....	1983	14,862	558	296	161	59,994	1,469	778	640	97.6	13.86
	1982	14,761	595	273	155	62,697	1,967	1,015	652	96.9	20.50

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 11 OF 13

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Midwestern Dist., Inc.	1983	$ 26,213	$ (479)	$ (178)	348	$ 81,619	$ (5,722)	$ (1,857)	1,280	107.0	-0-
	1982	16,205	(553)	(63)	127	61,602	(758)	204	962	101.2	1.35
Milne Truck Lines, Inc.	1983	19,679	138	(64)	142	77,892	(2,134)	(1,629)	555	102.7	-0-
	1982	15,662	(995)	(504)	113	69,533	(991)	(798)	523	101.4	-0-
Mistletoe Express Service	1983	16,916	386	61	78	71,908	1,551	94	270	97.8	0.85
	1982	12,638	707	187	50	47,561	2,198	949	204	95.4	7.36
Murphy Motor Freight Lines, Inc.	1983	23,427	582	130	190	84,416	(471)	(745)	710	100.6	-0-
	1982	20,422	52	(181)	160	79,978	(1,130)	(1,105)	662	101.4	-0-
Northwest Transport Service	1983	16,177	1,839	1,002	80	63,846	7,247	3,772	358	88.6	26.40
	1982	15,947	1,821	1,152	91	59,970	5,081	3,161	410	91.5	30.35
Overland Express, Inc.	1983	14,501	921	440	242	53,924	3,851	1,617	818	92.9	36.83
	1982	12,214	551	129	181	49,272	1,809	329	699	96.3	11.88
Pacific Intermountain Exp. Inc.	1983	89,647	3,182	2,459	678	381,369	718	(1,377)	3,137	99.8	-0-
	1982	101,971	655	326	854	416,357	1,292	2,244	3,604	99.7	4.24
Pacific Motor Trucking Company	1983	30,622	(869)	(1,186)	297	114,520	(10,490)	(11,564)	1,051	109.2	-0-
	1982	36,360	(3,062)	(3,385)	377	126,325	(14,834)	(15,310)	1,679	111.7	-0-
Red Arrow Freight Lines, Inc.	1983	11,331	(178)	(224)	157	45,777	1	297	622	100.0	3.44
	1982	12,046	217	116	170	50,000	1,301	940	711	97.4	11.29

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 12 OF 13

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Riss International Corporation....	1983	$ 16,813	$ 169	$ 77	275	$ 76,106	$ (1,521)	$ (830)	1,266	102.0	-0-
	1982	19,027	(174)	(100)	301	86,853	426	747	1,218	99.5	5.17
Santa Fe Trail Transport Company..	1983	12,060	25	38	69	49,524	(906)	(90)	280	101.8	-0-
	1982	14,158	134	91	71	59,205	2,469	1,431	286	95.8	15.00
Schneider Transport, Inc..........	1983	41,115	1,285	570	839	162,927	10,333	5,613	3,145	93.7	93.43
	1982	39,127	(440)	(235)	797	161,323	(2,805)	(1,233)	2,996	101.8	-0-
Schwerman Trucking Company........	1983	15,103	525	173	1,297	58,114	436	(1,677)	4,937	99.3	-0-
	1982	17,056	685	418	1,451	70,729	130	(2,594)	6,125	99.8	-0-
Willis Shaw Frozen Express, Inc...	1983	12,280	778	322	130	51,519	2,985	1,286	529	94.2	8.68
	1982	13,744	1,170	500	139	55,996	5,141	2,747	566	90.8	21.26
System 99.........................	1983	17,107	1,104	717	95	62,734	104	(2,234)	370	99.7	-0-
	1982	15,403	402	(454)	92	65,768	(1,767)	(3,827)	424	102.7	-0-
Transcon Lines....................	1983	70,232	1,846	1,083	397	261,817	(1,037)	(1,457)	1,487	100.4	-0-
	1982	64,648	(1,590)	(404)	351	254,539	(5,568)	(5,969)	1,366	102.2	-0-
Tri-State Motor Transit...........	1983	27,802	1,590	711	248	103,986	1,314	157	915	98.7	0.79
	1982	27,168	1,264	351	231	109,419	3,474	702	833	96.8	3.35
United Transport..................	1983	17,594	1,256	735	334	57,723	138	(349)	1,094	99.8	-0-
	1982	14,702	(106)	(256)	343	58,732	(1,245)	(1,786)	1,405	102.1	-0-

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

	QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
United Van Lines, Inc.............1983	$ 64,562	$ (47)	$ 281	109	$ 244,839	$ 404	$ 2,911	481	99.8	15.90
1982	63,140	(614)	(81)	99	254,410	(1,945)	408	517	100.8	2.66
Total Western Carriers (45).......1983	1,492,989	62,430	27,236	14,930	5,857,966	100,195	34,538	58,553	98.3	3.61
1982	1,506,424	28,176	11,988	15,525	6,085,469	86,082	39,225	65,039	98.6	3.79

1/ Net Carrier Operating Income - Difference between carrier operating revenues and carrier operating expenses.

2/ Net Income - Net income, after including fixed charges, non-operating income, income taxes, unusual or infrequent items, earnings attributable to discontinued segments, extraordinary items and cumulative effect of changes in accounting principles, but before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

3/ Revenue tons hauled reflect common and contract carrier service.

4/ Operating Ratio - Ratio of operating expenses to operating revenues.

5/ Return on Equity - Ratio of net income before net extraordinary charges for write-down of operating rights to shareholders' equity less intangible property at end of previous calendar year. The symbol -0- indicates a deficit in net income and/or shareholders' equity.

6/ The 100 carriers listed are generally the largest Class I U.S. motor carriers of property based upon revenues, with the following exceptions. Contract carriers are not included because the data filed by these carriers were substantially reduced in scope, in accordance with the Commission's revised reporting regulations, effective January 1, 1980. Also, the two largest motor carriers in terms of revenue generated, United Parcel Service, Inc. and United Parcel Service, Inc. (New York), are not included in this report because their operations are generally dissimilar from the carriers shown in this report and other carriers in the motor carrier industry. Several carriers which are among the 100 largest are not included in this report because their data had not been received when this report was prepared. Those carriers were replaced by large carriers which rank just below the 100 largest in size in order to arrive at a listing of 100 carriers.

7/ Effective January 20, 1983, Georgia Highway Express, Inc. changed its name to Transus, Inc.

8/ Data shown above for East Texas Motor Freight Lines, Inc. for the twelve months ended June 30, 1983 reflect operations from July 1, 1982 to September 30, 1982. Since this carrier merged into the ABF Freight System, Inc. in September 1982, the results of operations over its system from October 1, 1982 to June 30, 1983 are included in the data reported by and shown above for ABF Freight System, Inc. Although the data for East Texas is shown separately above, ABF and East Texas are considered one carrier for this report.

DRAFT - McClelland

APPENDIX 3

STUDY PROPOSAL

HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

Section of Research and Analysis
Office of Transportation Analysis

January 1983

OUTLINE OF STUDY

Page

I INTRODUCTION
  (a) Purpose
  (b) Scope
  (c) Methodology

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  (a) Household Goods Defined
  (b) Historical Background

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  (a) Motor Carrier Act of 1980
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IV IMPACTS OF THE ACTS
  (a) New and Expanded Authority
    (1) Types of Authority
    (2) Use of Authority
  (b) Pricing Policies and Practices
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    (1) Structure of the Industry
      (a) Firm Size
      (b) Firm Types
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V ANCILLARY TOPICS
  (a) Performance Standards
  (b) Pooling Arrangements

VI SUMMPARY AND CONCLUSIONS
  (a) Findings Delineated Re:
    (1) Industry Stability and Financial Soundness
    (2) Degree of Competition
    (3) Flexibility Regarding Quality and Price Options
    (4) Shipper Satisfaction Including Violation Remedies
    (5) Overall Responsiveness to The Act
    (6) Economy vs. Legislation

I INTRODUCTION

A. Purpose. The purpose of this study of the household goods industry is responsive to the mandate of Congress when in the Household Goods Transportation Act of 1980 they stated: "The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the effects of this legislation, no less than annually for the first 5 years following the date of enactment of this Act, to ensure that this Act is being implemented according to the congressional intent and purpose."

B. Scope. The study will be designed to determine and evaluate the impact of the Household Goods Transportation Act of 1980 on the conduct and performance of the industry within the context of the objectives of the Act which are stated to reduce the regulation of and increase competition within the industry and between its firms. This shall be a national study of the effects of the Act on the industry structure, current marketing strategy and performance. This would include the effects of increased competition on size of firms, market concentration, mover-agency relationships, geographic scope of operations, price/service options, binding cost estimates, guaranteed pickup and delivery, full replacement insurance coverage, rate actions including discounting, the transportation of non-household commodities, and an analysis of consumer complaints and satisfaction. The study would be planned and, if deemed advantageous, carried out in close coordination with the Office of Compliance and Consumer Assistance.

C. Methodology. Depending on the depth to which the Commission views congressional intent, the methodology would include a broad questionnaire sent to carriers, individual shippers, agents, contract shippers and individual owner-operators together with personal visits directly to the field as well as over the telephone with a broad sampling of those parties. A separate effort would be undertaken with U. S. Government shippers.

The study done last year, by the Office of Compliance and Consumer Assistance, was extremely well done considering the lack of time and resources available. Their study assesses and discusses the origin and evolution of the industry, the size and nature of the market, the composition and operations of the industry, price and service options, and reactions of shippers to those options. We would plan to expand to this study as indicated in "Scope" above. Additionally, we will have the benefit of 12 more months' time for the industry to react to the provisions of the Act which should allow observations and conclusions not possible in the earlier study and which better enable a reporting to Congress reflecting current conditions in the industry and the industry's responsiveness to the policy set forth in the Act.

II HOUSEHOLD GOODS INDUSTRY

A. Household Goods Defined. Any study of this type should include a complete definition of the industry including, but not necessarily limited to, the size of the market and its components (first, second, and third proviso shipments) and the various subcomponents of each. Also, it is important to understand how participation in each of these components varies from carrier to carrier.

B. Historical Background. The purpose of this section would be to give the reader an idea of the industry operating practices and growth patterns from its beginnings prior to regulation and tracing that history to the time of the passage of the 1980 Act in an attempt to create some bench mark from which to compare the markets, financial soundness, operating practices, and pricing policies since the Act.

III MAJOR PROVISIONS OF ACTS AFFECTING THE INDUSTRY

A. Motor Carrier Act of 1980. The study will examine, list, and explain the major provisions of the MCA of 1980, such as new lessened requirements for obtaining operating authority, etc. together with the reasons that they might affect carriers and shippers.

B. Household Goods Transportation Act of 1980. The study will list, examine, and explain the major provisions of the HGTA of 1980, such as enhanced abilities to flexibly price services, etc. together with the reasons that they might affect carriers and shippers.

IV IMPACTS OF THE ACTS

A. New and Expanded Authority.

(1) Types of Authority. It is important to understand what types of authority have been sought and granted (contact and/or common) to perceive what shifts and trends

might be occurring in the markets and operating practices of individual carriers. From these shift, it might be determined if there are concomitant shifts in demand territorially or otherwise.

(2) Use of Authority. Many general commodity carriers,in addition to the household goods carriers, have been granted extended or new authority to haul household goods either specifically or by the omission of a restriction that we properly perceive the extent to which that new authority is being actively used and marketed with particular emphasis on any trend by general commodity carriers into the household goods sector of the transportation industry. Also, it will be important to understand the extent that nationwide grants of authority are or are not being used by the industry.

B. Pricing Policies and Practices. At the heart of the study will be the effect of market competition on price options:

(1) Discounts may be a method by which a carrier or group of carriers may seek to expand their markets and/or effectively compete in current markets for available traffic. We need to find out the extent to which carriers are offering such discounts and their nature (variety).

(2) Contract rates are primarily the function of contract carriers and may be offered to commercial firms in an increasing amount. The study should determine the level and degree of departure from current class rates. The extent to which such contact rates are being offered should also be of interest.

(3) Binding estimates were permitted and encouraged by the HGTA of 1980. In last year's study, OCCA found that only one major carrier was "pushing" this type of charge mechanism; however, we need to know the extent to which this type of offering has grown since that time and attempt to establish total charge relationships by carrier and see if customer cost has risen or fallen compared to class rate structures.

C. Services. We will examine the extent to which the carriers are offering: (1) guaranteed on-time pickup and delivery, (2) full value protection, (3) claim settlement programs, and (4) the degree to which the Commission is monitoring the service of carrier agents.

D. Financial Viability.

(1) Structure of the industry including firm size and type of firm needs to be known when trying to determine financial viability particularly when comparing one firm to the other. For instance, if return on equity is used as a measure of financial well being, it is important to know whether a carrier(s) uses all or mostly all owner-operators to perform its service or if it uses company owned truck and salaried drivers (some do).

(2) In reaching any conclusions regarding the financial condition of the industry or individual carriers, it will be necessary to attempt to isolate and evaluate all of the factors affecting that condition.

V ANCILLARY TOPICS

A. Performance Standards. Section 11110(a)(3) of the HGTA of 1980 requires that the Commission establish performance standards keeping in mind the level that can reasonably be achieved, the degree of harm which might result if violations occur, the need to set standards sufficient to deter abuses, service requirements of the carriers, the cost benefit ratio of such standards, and the need to set the standards at a level designed to encourage carriers to offer responsive service. We will attempt to monitor and report the degree to which carriers have responded and complied with these standards.

B. Pooling Arrangements. A part of the study should include some data regarding the extent to which the carriers have sought, had granted, and are using the pooling agreement provisions of the Act.

VI SUMMARY AND CONCLUSIONS

Findings should include, but not necessarily be limited to, quantitative and qualitative conclusions concerning: (1) industry stability and financial soundness, (2) the degree to which competition is flourishing in the marketplace, (3) the degree to which carrier flexibility is being exercised through quality of service and price options, (4) the extent of shipper satisfaction with price, service, and violation remedies, (5) the extent to which overall industry is responsive to the underlying intent of the Act, and (6) if possible, determine the degree to which the Act and the overall economy have each played a part in the cause and effect of current market conditions.

STATEMENT OF REESE H. TAYLOR, JR., CHAIRMAN
INTERSTATE COMMERCE COMMISSION
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
ON
IMPLEMENTATION OF THE MOTOR CARRIER ACT OF 1980

November 16, 1983

Mr. Chairman and Members of the Committee:

I want to thank you for the opportunity to appear here today at the third annual House oversight hearing to present the views of the Commission with regard to the implementation and effects of the Motor Carrier Act of 1980. In addition to the statement, we have included the following attachments: (1) a list and explanation of the current status of proceedings initiated by the Commission to implement the Act; (2) a summary of significant Motor Carrier Act proceedings under judicial review; (3) studies and reports that form the basis of the Commission's monitoring efforts; (4) the latest earnings and traffic volume data for the 100 largest motor carriers of property; and (5) information on 1983 general rate increases.[1]

INTRODUCTION

At prior Motor Carrier oversight hearings, the Commission has testified that the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980. I would like to strongly reaffirm that view today.

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[1] Designated Appendix I, II, III, IV and V, respectively.

Despite the serious financial difficulties that some motor carriers were experiencing at the time of last year's hearing on June 23, 1982, we reported that the significant reforms of the Motor Carrier Act - namely, eased entry, rate flexibility, and reduced antitrust immunity - were being achieved. Clearly, the environment in the trucking industry had become more competitive. With regard to the industry's declining financial performance, the Commission noted that economic conditions, rather than regulatory reform, appeared to be the principal cause.

I am pleased to report that the latest figures indicate that the motor carriers' financial picture has improved. As we predicted, the carriers' earnings are improving along with the general recovery in the economy.

At this point, I would like to highlight some of the indicators that have led the Commission to conclude, for the third year, that the Motor Carrier Act reforms are indeed working.

- Since the effective date of the Act, July 1, 1980, 18,221 new carriers have received authority from the Commission. This marks an increase of 10,335 over the figures reported to this Committee on June 23, 1982. More than 3,806 grants of authority have been issued to new carriers in just the last six months.
- The total number of new certificates served since the Act went into effect is 60,411. There was an increase of approximately 17,411 new certificates since the last House hearing.
- As expected, applications appear to have leveled off. As of June of this year, applications were being filed at a rate of approximately 1,100 each month. They are holding steady at about that rate.
- Overall, shipper satisfaction with the level of service remains high.
- Where small community service has changed, it has

  Commission's nationwide small community survey, 9% to 20%

said more service was available now than before the Act, 77% to 90% said the availability of for-hire truck service was unchanged, and only 2% to 5% said less service was available now. With respect to freight claims, 85% to 97% of those shippers surveyed indicated either that they had no claims or that there had been no change in their ability to resolve the claims. Three percent to 8% indicated more problems and 1% to 9% indicated fewer problems with respect to claims. Similar results have been reported in a recent DOT study.

- Pricing innovation and independent ratemaking have continued to increase dramatically since passage of the Act. In FY 1982, 180,829 independent rate actions were reported by major rate bureaus. The figure for FY 1983 is 230,184.*

- Although initial results indicated that the new law had little positive impact on owner-operators, recent figures suggest that, increasingly, they are making use of the special provisions of the Motor Carrier Act to obtain their own operating authority. Since June 1, 1982, 249 owner-operators have been granted certificates for operating authority.

- The Motor Carrier Act has significantly reduced the role of the Commission which has lessened the workload. As a result, authorized permanent full-time staffing levels have decreased to a projected 1,150 for FY 84. This should net considerable cost savings.

- In response to the revised National Transportation Policy, a program has been initiated to promote greater minority participation in the motor carrier industry. A list was developed of existing minority carriers and a monitoring program put in place. In addition, at last year's oversight hearing, we reported on a series of hearings which the Commission held to find out whether minority carriers encounter any special problems in entering the industry. The results of the Commission's efforts in this area were made available to the Subcommittee in a report entitled, Ex Parte No. 150 (Sub-No. 1), Report on Minority Participation in the Surface Transportation Industry. A more recent report, just released, appears in Appendix III. It contains an updated list of minority-and female-owned motor carriers holding interstate operating authority and the latest results from our monitoring efforts.

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*References to FY 1983 data in this statement include projected figures for September.

SERVICE

Based on three years of available data on implementation, the pre-Motor Carrier Act predictions of strengthened competition among carriers, resulting in lower rates and increased price/service options for shippers, have come true.

Our experience indicates that the levels of service remain good. Complaints continue at a low level. For FY 1983, complaint levels concerning motor carriers of property ranged from a high of 1,020 in March to a low of 670 in August. September appears to be the lowest month yet, with only 139 complaints as of September 13. This is substantially below pre-Motor Carrier Act levels. In FY 1983, the total number of complaints against motor carriers of property declined more than 5,000, compared to the number received in FY 1982.

Even more significant, however, in measuring the success of the Act, is the status of service to small communities, since this was the area that most people were concerned would suffer from regulatory reform.

SMALL COMMUNITIES

At the last hearing, we reported to this Committee that motor carrier service to small communities had not been curtailed as expected and, if anything, had improved. This conclusion was based on a report, mandated by section 28 of the Motor Carrier Act, entitled the Small Community Service Study, released September 1, 1982.

We summarized the results of our study at last year's oversight hearing, since the report had not quite been completed yet. In addition, I have highlighted some of the final data earlier in today's statement. We have no reason to believe that these results have changed and, in fact, a recent study conducted by DOT supports our conclusions.

The Commission believes it is important to note that the results of this study are remarkably consistent. While regulatory reform has caused no dramatic changes in small community rates or service, changes that did occur were generally favorable. In the vast majority of cases, shippers reported very little change in quality of service as measured by on-time performance, loss and damage claims and availability. In addition, where changes did occur, improvement in service was reported much more often than service deterioration. Complaints about trucking service in small communities have decreased significantly since passage of the MCA. Finally, an examination of rates indicates that rates to and from small communities have increased less rapidly than rates to or from larger cities.

It is the conclusion of the study that the pre-Motor Carrier Act fears that carriers would abandon service to small communities have not materialized. In fact, the evidence suggests that small communities have actually benefited from this legislation.

SIGNIFICANT CHANGES DURING THE THIRD YEAR OF IMPLEMENTATION OF THE MOTOR CARRIER ACT

The third year of experience with the Motor Carrier Act was marked by a continuation in the trend toward an increased number of contract carrier applications, particularly in regard to the percent of applications filed by first-time applicants. This is in contrast to the dramatic increase during the first year in the overall number of applications for common carrier authority, a phenomenon which was primarily due to the initial surge by existing carriers to expand their authority under the new liberalized entry standards.

The following table illustrates these changes:

Dispositions	Percent of all Applications (rounded) 7/80-6/81	7/81 - 10/15/82	10/16/82-8/31/83
All applications for contract carrier authority	16%	28%	25%
New carrier applications for contract authority	3%	10%	9%
New carrier applications for all types of authority	11%	40%	46%

The trend of general commodity common carriers initiating special commodity operations has continued. It appears that the movement toward private carrier operations has slowed. There have been 937 notifications of intent to engage in private intercorporate hauling filed since July 1980, but only 61 of those have been filed since December 1, 1982. Shippers are turning increasingly to contract carriage and common carriage as rates and service become more competitive.

Carriers continue to file tariffs combining discount rates with guaranteed service. A delivery sufficiently late can result in a discount of as much as 40 percent below regular rates.

The number of independent rate actions taken in bureau tariffs provides additional evidence of increased competition. For ten major rate bureaus, the number increased by 31 percent during FY 1983 as compared to FY 1982 1980 -- from 180,829 to 230,184.

Shippers are benefiting by the increase in competition which has reduced rates and improved service. Many shippers are placing greater emphasis on a total distribution and logistics approach whereby they strive to optimize the balance between level of customer service and cost of service, and for any chosen service objective, to minimize the total costs for production and distribution. The number of opportunities to achieve these goals has multiplied as carriers compete with a variety of price-service options.

The Commission has also sought to increase the trend toward intermodalism by its actions in such cases as Ex Parte No. MC-156, Motor Carrier Operating Authority- Railroads, in which we eliminated the "special circumstances" doctrine, which restricted grants of authority by railroad affiliated motor carriers to performance of service auxiliary or incidental to a rail movement, unless special circumstances justified the issuance of unresticted authority. In addition, in Ex Parte No. 438 (served August 17, 1983) the Commission is proposing to modify its policy regarding the acquisition of trucking companies by railroads. Comments were due in early October.

FINANCIAL CONDITION OF MOTOR CARRIER INDUSTRY

As I mentioned in the introduction to my statement, there has been an improvement in the motor carriers' financial performance, which parallels the turn around in the economy. This is indicated by the latest earnings data for the industry. Tonnage levels did continue to decline, but the decrease was much less than we reported last year.

A. Latest Earnings Data

The most recent data released by the I.C.C.'s Bureau of Accounts indicates increased revenues and substantially improved earnings for the nation's largest trucking companies in the first quarter of 1983, as compared with the same period during the previous year. The report, contained in Appendix IV, compares the earnings of the 100 largest motor carriers of property (excluding two United Parcel Service carriers) for the quarter and twelve months ending March 31, 1983, with the corresponding periods in 1982.

A comparison of the first quarter operations shows that:

- Operating revenues increased 2.3 percent to $3.6 billion.
- Net carrier operating income increased substantially, from a 46.1 million loss in the 1982 period to a profit of $65.6 million in the first quarter of 1983.
- Net income rose similarly. from a $38.6 million net loss to a $31.6 million net income.
- Revenue tons hauled decreased 4.5 percent.
- Of these 100 carriers. 56 reported increases in operating revenues, 72 reported improved net carrier operating income, 69 reported improved net income, and 41 reported increases in tonnage hauled.

A comparison of results for the 12-month period reveals that:

- Operating revenues fell 2.6 percent to $15.3 billion, as revenue tons hauled declined 8.9 percent.
- Net carrier operating income decreased 18.6 percent to $324 million.
- Net income declined 30.3 percent to $158.9 million.
- Operating ratio (ratio of operating expenses to operating revenues) increased to 97.9 percent from 97.5 percent.
- Rate of return on shareholder's equity declined to 5.47 percent from 7.70 percent.

The improvement in earnings in the first quarter of 1983 represents the first year-to-year quarterly increase in earnings for the 100 largest trucking companies since the second quarter of 1981. A preliminary review of the second quarter data reveals a continuation of the upward trend. Revenues and earnings in the second quarter of 1983 increased compared to the second quarter of 1982, with net carrier operating income and net income both rising substantially.

B. Recent Bankruptcies and Cessation of Operations by Motor Carriers

Since the Commission has legal jurisdiction over some aspects of railroad bankruptcies, we are officially notified of any bankruptcy filings by railroads. However, motor carriers are not required to formally notify the Commission when they file for bankruptcy or cease operations. Consequently, we do not have a definitive or an all-inclusive list of motor carrier bankruptcies, many of which involve small companies.

The following is a list of large motor carriers which have recently either filed for bankruptcy or have ceased operations:

			Latest Available Annual Revenues (000)
Briggs Transportation	Filed for bankruptcy	2/83	$ 65,794
Midwest Emery Freight	Filed for bankruptcy	1/83	$115,795
Gordons Transports, Inc.	Filed for bankruptcy	2/83	$ 95,370
IML Freight, Inc.	Filed for bankruptcy	7/83	$133,113
Maislin	Filed for bankruptcy	7/83	$195,700

RATES

Since passage of the Motor Carrier Act, there has been greater pricing innovation and a dramatic increase in independent ratemaking. As indicated earlier in my testimony, the number of independent rate filings increased by 31 percent compared to FY 1982, rising to 230,184 in FY 1983. Total motor carrier filings have also increased substantially: from 427,043 in FY 1980; to 512,184 in FY 1981; to 725,864 in FY 1982; to 1,069,782 in FY 1983.

The vast majority of the filings are rate reductions. Volume discounts, multiple shipment discounts, shipper allowances, and aggregate tender discounts are among the new price options being offered by carriers. For a description of some of these discounts, see Staff Report No. 9, *Highlights of Activity in the Property Motor Carrier Industry, July 1983*, contained in Appendix III. It is clear that the Act has had a very substantial pro-competitive impact.

We came to this conclusion in our investigation of allegations of predatory and discriminatory pricing in Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980*. After reviewing the comments filed in that proceeding, the Commission in its report, served September 13, 1983, reaffirmed its earlier decisions in *Lawfulness of Volume Discount Rates By Motor Common Carriers of Property, 365 I.C.C. 711 (1982), and No. 38872, Petition for Declaratory Order - ATA - Lawfulness of Discount Rates*, (not printed) served October 1, 1982. These earlier decisions and the recent report affirmed long-established Commission principles and the use of a case-by-case approach and existing standards to determine the lawfulness of motor carrier prices and practices. It was indicated that primary reliance would be placed on *ex post* remedies, should anticompetitive behavior be proven. The Commission determined that the new pricing practices have greatly benefited the shipping public and have led to increased carrier efficiency and heightened marketing sensitivity. With regard to restrictions on innovative and reduced rates, the Commission found that they are unnecessary and would have a chilling effect on legitimate competition.

The deciding factors were:

1) the inherently competitive nature of the trucking industry (the trucking industry does not have the structural characteristics necessary for destructive competition to take place);

2) the benefits to the public and increased efficiency in the industry from discount pricing;

3) the advantages of the case-by-case approach in determining the lawfulness of single-firm conduct which involves a variety of factors;

4) the increase in marketing programs tailored to specific customer needs; and

5) the increasing intermodal trend.

With regard to the collective ratemaking process, our final decision in Ex Parte No. 297 (Sub-No. 5), which established new requirements and standards for motor rate bureaus as a condition to continued antitrust immunity, has now been in effect for a little over two years. Since our decision became effective, the bureaus have been adjusting to the new ratemaking environment with limitations on single-line voting; limitations on discussion and bureau control over whether and when independent action, zone, or released rate proposals should be docketed; higher quorums; item-specific proxies; detailed minutes of all meetings where tariff items are discussed; and advisory and confidentiality restrictions on rate bureau staff. The bureaus have submitted revised agreements to conform to the Motor Carrier Act and our decision in Ex Parte No. 297 (Sub-No. 5), and those agreements are now being analyzed.

In addition, the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Conference, Inc. have recently petitioned the Commission for the withdrawal of antitrust immunity for collective ratemaking by motor carriers of property for rates on shipments under 1,000 pounds. The proposed elimination of antitrust immunity for rates on these small shipments is supported by the National Industrial Transportation League and the Department of Justice. According to the petition, continued antitrust immunity for collective ratemaking on these shipments is inconsistent with the transportation policy. Specifically, petitioners contend that there is little effective competition for shipments below 1,000 pounds and that, under these conditions, collective ratemaking results in the imposition of unreasonable rates, allowing bureau members to derive the major portion of their profits from revenues on small shipments.

Meanwhile, the Motor Carrier Ratemaking Study Commission issued its report on "Collective Ratemaking in the Trucking Industry" on June 1, 1983. The Study Commission recommended complete elimination of antitrust immunity for collective ratemaking for all rates, for freight classification, and for related activities in the motor carrier industry. The suggested date when all collective ratemaking activities would be fully subject to the antitrust laws is July 1, 1984, the statutory date for expiration of antitrust immunity for single-line collective ratemaking. I should add that the Commission monitors rate bureau activities on a regular basis.

The rate bureaus continue to process and file general increases, subject to the Act's limitation of discussion to industry average costs. Appendix V contains information on general rate increases and rate restructurings for FY 1983.

In evaluating these collective rate proposals, it should be stressed that the percentage increases shown overstate the actual increase in rates, because of the number of independent filings which reflect rate reductions from the authorized rate levels.

OWNER OPERATORS AND THE MOTOR CARRIER ACT

The Motor Carier Act of 1980 included a series of provisions designed either directly or indirectly to assist owner-operators.

One provision of the Act designed to aid owner-operators enables them to haul previously-regulated food or edible products (excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, or agricultural fertilizers with their own ICC certificate rather than under a lease agreement, based on a "fitness test". This provision was designed to make it easier for owner-operators hauling exempt commodities from agricultural areas to find backhauls. Since June of 1982, approximately 249 owner-operators have received authority under this provision.

In an effort to expand the opportunities for owner-operators to obtain agricultural backhaul traffic, Congress also expanded the list of exempt commodities to include livestock feed, poultry feed or seeds, and plants - items previously subject to ICC regulation. It was believed that owner-operators would have a greater opportunity to obtain such traffic and receive additional revenues.

As we reported last year, the specific provisions in the Act designed to directly assist owner-operators, particularly the single unit fleet owner, have had little impact on the vast majority of owner-operators, with the exception of the recent trend noted above. This still remains true.

The Commission has spent considerable time and resources to inform owner-operators about the provisions of the Motor Carrier Act of 1980 and to assist them in obtaining authority. In conjunction with the Small Business Administration and the Department of Transportation, the Commission conducted 15 two-day training conferences for owner-operators across the nation in 1981. In addition to the on-site presentation, a 180-page manual was made available for each conference participant. The manual was designed to act as a permanent reference guide for owner-operators to secure information on economic regulations that relate to their businesses. Based on the success of the first year of the educational conferences, the Commission held 24 similar conferences in 1982. This fiscal year there have been 18 conferences held. The Commission strongly supports these efforts, and will continue participating in this effort. The conferences were well attended by owner-operators and were beneficial in eliminating the misconceptions about entry into the motor carrier industry.

The Commission's Small Business Assistance Office (SBAO) has been the agency focal point for providing practical information and advice to owner-operators on resolving their daily problems. The SBAO has also prepared a series of simplified informational bulletins on specific topics to further assist owner-operators and others in understanding how to conduct operations as a regulated trucker.

The Commission has continued to address other specific owner-operator problems to facilitate their operation as leased operators or as certificated carriers. In a recent notice served August 29, 1983, the Commission has proposed the elimination of the requirement that equipment be leased for a minimum duration of 30 days when operated by its owner. This proposal will enable owner operators to secure short term traffic when the lessee is unable to provide a load in a timely manner and should generate considerable income. Comments in Ex Parte No. MC-43 (Sub-No. 15), Elimination of Thirty Day Leasing Requirement, were due on September 29, 1983.

COMMENTS ON REPORTS AND PARTICULAR SECTIONS OF THE ACT

Restriction Removal

Applications by motor common and contract carriers to remove unnecessary restrictions from operating authority under 49 U.S.C. 10922(h) have fallen off dramatically. The restriction removal procedures allow for the broadening of a carrier's authority by enlarging the categories of property authorized to be transported and the territory that may be served. Such broadened authorities allow for intermediate point, round-trip, and county-wide minimum service. The procedures also permit elimination of other limitations which the Commission finds wasteful of fuel, inefficient, or contrary to the public interest.

Since the inception of the program, in January 1981, almost 5,464 applications for broadened authority have been filed. Approximately 164 applications have been received since December 15, 1982. This follows the general decline in all motor carrier applications for authority. Virtually all of the applications published in the Federal Register have been approved. A few were modified slightly after consideration of comments which were submitted in individual cases.

Food and Grocery Products Transportation

Section 8(b) of the Act requires the Commission to monitor the extent to which cost savings accruing to customers by reason of compensation permitted by section 8(a)[1] are being passed on to the ultimate consumer. The third annual report to Congress was submitted on July 1, 1983, as required by section 8(b). (For a copy of the report, see Appendix III.) In the first year, as a result of lack of activity, we were unable either to quantify the magnitude of savings from customer pick-up activity or to assess the degree to which such savings might be passed on. For the last two years, however, with the assistance of consultants familar with the wholesale and retail grocery industries and our own grocery industry contacts, we were able to obtain limited but reliable data. The conclusions reached in the report are as follows:

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[1] Section 8(a) of the Motor Carrier Act of 1980 permits sellers of food and grocery products who sell under a uniform zone delivered price system to reduce the price of their products by an amount that does not exceed the actual transportation cost savings to the seller if the purchaser picks up the products.

(1) The passage of section 8 and other related sections of the Motor Carrier Act of 1980 resulted in a small but significant increase in customer pickup during 1981 as compared with 1980, and a rather substantial increase during 1982.

(2) There is no indication of any measurable failure to pass Section 8 savings through to the customers as required by the Act.

(3) No evidence of significant difficulties, abuses, or patterns of discrimination against small wholesalers or retailers as a result of Section 8 were uncovered.

(4) While the net cost savings from Section 8 are difficult to measure, it seems that such savings are increasing.

The report estimates that approximately $165 million more was paid in customer pickup allowances in 1982 than in 1979. This represents an increase of $55 million from our estimate of 109 million in 1981. In order to determine the estimated level of customer pickup allowances resulting from Section 8, that figure would have to be reduced by several factors, including the effects of inflation and expansion of in-house motor carrier operations not related to Section 8, such as intercorporate hauling. All of these factors further reduce the estimated level of customer pickup allowances resulting from Section 8. In addition, from this level must be subtracted the cost associated with customer pickup, the estimates which, according to interviewees willing to "venture a guess," ranged from 10 to 80 percent of allowances. Thus, a reasonable estimate of total net annual Section 8 related savings would be less than the $165 million estimated increase in pickup allowances since 1979.

These actual and potential savings, while falling short of the $300 million in 1975 dollars originally estimated by proponents of the provision, are indeed significant to many of the individual firms taking advantage of the opportunities created by Section 8 to remain competitive in this low margin industry.

For example, Progressive Grocer reported that during the nine months Borden was testing its backhaul program in 1982, almost one-quarter of a million dollars in backhaul revenue was passed on to Borden customers, with one west state retailer receiving in excess of $24,000 in backhaul allowances during that time. The Associated Wholesale Grocers, Inc. reports a backhaul income of $6 million annually since passage of the Motor Carrier Act of 1980, which is used to reduce costs to stores (Warehousing and Trasnportation, April 1983). Also noted in the same article was an increase in backhaul activity by the Certified Grocers of California, a wholesaler, whose backhaul/pickup of inbound dry grocery products increased from 13 percent in 1965 to 51 percent in 1982.

As greater numbers of firms take advantage of the opportunities now available to them, Section 8 savings should continue to increase. In, addition, we note that the level of discussion of the backhaul issue in trade journals decreased this year compared to last. This reflects the fact that Section 8 discounts have become an accepted business practice that is no longer unusual or controversial.

Ex Parte No. 410 and Lumping Enforcement Efforts

The Motor Carrier Act of 1980 requires the Commission to study and report to Congress on the loading and unloading practices of motor carriers of property. The requirement is found in section 15, the "lumping" provision of the Motor Carrier Act. The study conducted by the Commission in Ex Parte No. 410, decided February 23, 1982, concluded that loading and unloading problems are the exception and not the rule.

The vast majority of loading and unloading problems that do exist are particularly concentrated in the unloading of perishable commodities. In these situations, section 15 frequently is not the only law violated. Tax, labor, antitrust, and extortion violations may be involved as well. The use of casual laborers, or lumpers as they are called, is largely confined to truckload service; in particular, to meats, processed foods and exempt produce.

Unloading abuses are never precisely the same from one problem area to the next. As is widely recognized, unloading problems occur most frequently in the delivery of fresh produce. Produce is typically delivered to two types of facilities--wholesale markets and chain store distribution centers. A typical facility may receive as many as 35 to 40 loads of exempt fresh produce daily.

In the past these facilities may have declared openly that drivers must accept and pay for unloading assistance, many in the belief that their cost of the produce and the transportation also includes unloading. While such a policy would now be in violation of section 15 unless the drivers were reimbursed by the facility, there still appear to be facilities where this policy prevails. However, a facility that desires the use of unloading assistance will now be more circumspect, using delay, exorbitant equipment rental fees or other artifices to impose their wishes.

Several conclusions can be drawn from an analysis of the problem markets described in Ex Parte No. 410.

(1) Unloading rather than loading is the problem area.

(2) The driver's resources have been expended; he must unload to recover his costs and, in the case of perishables, must unload quickly.

(3) It is not the payment of a charge for legitimate service that is the economic harm. Harm arises out of inflated charges and fees for illusory services.

(4) The power to charge in excess of the services provided often requires the cooperation or connivance of the receiving facility.

(5) Since the tactics of extortion may be easily disguised, clear cut violations of section 15 may be hard to demonstrate.

Since January 1, 1981, the Commission's field offices have assigned approximately 118 cases for investigation of possible lumping violations, 75 of which have been closed due to lack of sufficient documentation. One case was successfully pursued as an injunction and civil penalty case. Forty-two cases are still pending in the litigative or investigative stage.

Last year, we reported that the Commission targeted 167 facilities as potential areas of lumper abuse. This program has now been discontinued, as it did not provide the kind of information.needed to prosecute.

Instead, the field staff now handles lumper matters as they are brought to the attention of the Regional Offices. This could be as a result of complaints or through our "Driver Outreach Program," which involves road checks and visits to the larger truck stops located throughout the Nation to interview road drivers regarding their various problems, including lumping. All lumper complaints, oral or written, are afforded the highest priority and attention.

During FY 1983, the Regional Offices, while involved in these "Driver Outreach Programs" conducted 9,545 interviews with road drivers as compared to 3,000 at the time of our last report to Congress. All 6 regions are handling the lumper problem as situations occur in their respective territories. The most activity during FY 1983 was in the New England, East Coast and Gulf Coast regions, which involved checking 46 target areas and 20 shipper facilities.

Written Contracts of Haul

Section 16 of the Motor Carrier Act instructed the Commission, in cooperation with the Secretary of Agriculture, to require, where appropriate, the use of written contracts governing the for-hire motor transportation of interstate or foreign shipments of agricultural commodities otherwise exempt from regulation under 49 U.S.C. 10526(a)(6).

A final report of our findings with respect to this section was transmitted to Congress on March 24, 1982, and a copy of the report was also given to this Committee at last year's oversight hearing.

The Commission and USDA concluded that, while problems remain in the transportation of exempt agricultural commodities, there are strong indications that the imposition of a standardized written contract could create serious difficulties for the fresh fruit and vegetable industry without any assurance of overcoming the truckers' problems. Indeed, we found reason to believe that the use of a contract could result in diminishing the participation of independent truckers in this traffic, contrary to the intent of the Motor Carrier Act of 1980 to increase the opportunities available for these independents. We believed that other means of addressing these problems should be stressed. Consequently, we strengthened our commitment of enforcement resources in this area, and continue to pursue owner-operator abuse cases vigorously including prosecuting illegal lumping, violations of the leasing regulations, skimming and other practices which affect the transportation of fresh fruits and vegetables or any other agricultural commodities otherwise exempt from regulation under 49 U.S.C. 10526(a)(6).

Section 19 of the Motor Carrier Act of 1980

Section 19 of the Motor Carrier Act directs the Secretary of Transportation and the ICC to study the system of state regulations imposed upon interstate motor carriers and to prepare recommendations for Congress. State requirements range from a simple vehicle registration fee to a complex set of registration and tax requirements. The Department and the Commission divided the study workload according to each agency's expertise with the subject matter. The Commission was responsible for preparing recommendations for Public Law 89-170 (Federal law governing state public utility commission requirements for registration of interstate operating authorities) and intrastate economic regulation. Two series of public meetings were conducted and several interim reports have been published during the past 2 years.

The report has been submitted to Congress. It reaches the conclusion that, while the states have made progress toward more uniform requirements, movement has been slow. Programs proposed by groups of state administrators have been accepted by some jurisdictions, but rejections or modifications by others have stymied the progress of nationwide uniformity. The report evaluates the available options and makes specific recommendations. A copy of the Executive Summary is included in Appendix III.

Temporary Authority and Emergency Temporary Authority

Since February 4, 1980, decisions on applications for both temporary and emergency temporary authority have been handled by six regional motor carrier boards, comprised of three members each. The transfer predates passage of the Motor Carrier Act of 1980, which for the first time added specific statutory language with regard to emergency temporary authority applications and established time limits within which the Commission must decide applications for both temporary and emergency temporary authority.

During FY 1983, the six regional boards processed 4,304 TA applications and 2,930 ETA applications. During FY 1983, the boards disposed of a total of 7,234 applications for temporary and emergency temporary authority, a substantial decline from the prior fiscal year figure of 10,753.

There are several reasons for the decline in the number of filings for temporary and emergency temporary authority. First, a large number of carriers, who in the past, were frequent applicants have, since passage of the Motor Carrier Act, received grants of nationwide permanent authority, thus eliminating the need for temporary authority. Second, the faster processing time for permanent authority applications has also reduced the need for temporary authority. Finally, the state of the economy in the early part of FY 1983 had an impact upon the number of temporary applications filed.

The regions have been able to decide temporary authority applications well within the time limits prescribed by the Motor Carrier Act. The Act specified that TA's were to be decided within 90 days of filing, and ETA's within 15 days. For the first six months of FY 1983, TA's were decided on an average of 33.3 days after filing, and ETA's 3.7 days after filing. These figures have remained relatively constant since transfer of the function to the field.

Fuel Reimbursement Program

On May 24, 1983, the United States Court of Appeals for the Fifth Circuit determined that the Commission does not have jurisdiction to require motor carriers to reimburse owner-operators for increased fuel costs. In accordance with the court's mandate, the Commission terminated the motor carrier fuel surcharge program on July 23, 1983. The Commission continues to monitor the price of fuel, however, and makes the information public to assist those carriers which are continuing reimbursement to owner-operators on a voluntary basis.

AGRICULTURAL COOPERATIVE EXEMPTION

Section 24 of the Motor Carrier Act of 1980 raised the tonnage limit on nonfarm, nonmember regulated commodities which agricultural cooperatives could haul from 15 to 25 percent of a cooperative's annual tonnage; however, this provision has had little effect on the number of filings made by agricultural cooperatives to haul nonfarm, nonmember traffic.

* * *

The Commission continues vigorously to reform and minimize the regulation of motor carriers in accordance with Congressional intent and the National Transportation Policy.

While additional administrative actions are available to the Commission, the Commission strongly favors further legislation which would eliminate economic regulation of motor carriers of property.

This concludes the Commission's remarks on the implementation of the Motor Carrier Act of 1980.

I will be pleased to answer any questions you may have.

APPENDIX I

PROCEEDING IMPLEMENT MOTOR CARRIER ACT OF

NUMBER	TITLE/DESCRIPTION	STATUS
OPERATING RIGHTS CASES		
Ex Parte No. MC-43 (Sub-No. 12)	- Lease Rules Modifications	- Decision served 11/29/82. Stay pending judicial review - 4/25/83.
Ex Parte No. MC-43 (Sub-No. 13)	- Lease and Interchange of Vehicles (Rules Modifications) (49 CFR Part 1057)	Decision served 11/10/82. Published 11/12/82, (47 FR 51136). Correction served 11/30/82. Published 12/1/82 (47 FR 54083). EC voted to deny pets. for reopening and reconsideration 2/1/83.
Ex Parte No. MC-43 (Sub-No. 15)	- Thirty Day Leasing Requirement (49 CFR Part 1057)	- Notice of proposed rulemaking served 8/29/83. Published 8/30/83.
Ex Parte No. MC-43 (Sub-No. 16)	- Lease and Interchange of Equipment (Identification Devices) -- Placards	- Pet. for rulemaking filed 5/2/83.
Ex Parte No. 55 (Sub-No. 42)	- Dual Operations Policy	- Deletion of Rule - 7/2/80. Published 7/3/80 (45 FR 45528). Effective 7/3/80.

Ex Parte No. 55 (Sub-No. 43)	- Rules Governing Applications for Operating Authority	- Interim Rules - 7/2/80 - Final Rules - 12/24/80 - Challenged in court: -American Transfer & Storage Co., et al, v. Interstate Commerce Commission, Docket No. 81-4072 (5th Cir.) -Proceeding Dismissed - 4/8/82
Ex Parte No. 55 (Sub-No. 43A)	- Acceptable Forms of Requests For Operating Authority	- Proposed Policy Statement - 7/2/80 - Policy Statement - 12/24/80 - Challenged in court: -American Trucking Associations, Inc., et al. v. Interstate Commerce Commission, 659 F.2d 452 (5th Cir.) -Decision on petition to compel enforcement of the court's mandate, Docket No. 81-4026 - 2/25/82 -U.S. Supreme Court granted I.C.C. stay of writ of mandamus - 3/29/82 -Notice of Proposed Rulemaking served 8/8/83. Published 8/10 (48 FR 36285). Comments due 9/26/83.
Ex Parte No. 55 (Sub-No. 43B)	- Acceptable Forms of Requests for Operating Authority: Hazardous Materials	Proposed Policy - Statement - 4/22/81 - Comments received. - EC voted to discontinue proceeding (served 3/16/81).

	- Revision of Application Procedures Substitution of Motor for Abandoned Rail Service (49 CFR Part 1100)	- Final Rules - 11/20/81 Published 11/20/81 (46 FR 57051) Effective 12/21/81.
Ex Parte No. 55 (Sub-No. 45)	- Appellate Procedures	- Interim Rules - 7/9/80 - Final Rules - 4/3/81 (46 FR 20204) Pet. to reopen denied 8/5/81.
Ex Parte No. 55 (Sub-No.45A)	- Appellate Procedures	- Final Rule [amending Final Rules adopted in Ex Parte No. 55 (Sub-No. 45)] - 8/6/81
Ex Parte No. 55 (Sub-No. 56)	- Applications for Operating Authority - Motor Passenger Carriers	- Decision served 11/19/82. Final Rule Published 11/24/82 (49 FR 53260). Reopened to clarify and modify final rules - 3/15/83. Amendment of final rules served 9/6/83.
Ex Parte No. MC-64 (Sub-No. 2A)	- Special Temporary Authority Procedures	- Draft options papers being reviewed. Awaiting final action in Ex Parte No. MC-67 (Sub-Nos. 6 and 8).

Ex Parte No. MC-67 (Sub-No. 6)	- Elimination of Notification Procedure in the Processing of Emergency Temporary Authority Applications under 49 U.S.C. 10928	- Proposal served 2/23/81; 132 M.C.C. 424; 46 FR 13727 (2/24/81). Final rules decision being redrafted.
Ex Parte No. MC-67 (Sub-No. 8)	- Rules Governing Temporary Authority and Emergency Temporary Authority	- Notice of Proposed rulemaking served 2/23/81; 46 FR 13741 (2/24/81); Final rules decision being re-drafted.
Ex Parte No. MC-67 (Sub-No. 9)	- Revised Temporary Authority Rules	- Final Rules - 7/2/80 ;
Ex Parte No. MC-73 (Sub-No.1)	- Interchange Policies at International Boundaries	- Notice of proposed rulemaking served 6/22/81. Published 6/23/81, 46 FR 32460. Comments received. Decision being prepared by staff.
Ex Parte No. MC-75 (Sub-No. 2)	- Agricultural Cooperative Exemption	- Final Rules - 7/2/80 Published 7/3/80 (45 FR 45524). Effective 8/4/80.
Ex Parte No. MC-77 (Sub-No. 3)	- Elimination of Certificates as the Measure of "Holding Out"	- Notice of Proposed Rules - 1/22/81 - Oral argument - 10/1/81 - Proceeding terminated 2/25/83; Published 3/16/83 (48 FR 11136).

Ex Parte No. MC-79 (Sub-No. 2) and Ex Parte MC-152 (Sub-No. 1)	- Control of Duplicate Operating Rights; Policy Statement Regarding Duplicate Operating Rights	- Notice of proposed rules and policy served 3/29/83. Published 3/30/83, 48 FR 13198. Decision served 8/25/83.
Ex Parte No. MC-88	- Detention of Motor Vehicles Nationwide	- Rules served 11/9/82, 132 M.C.C. 906.
Ex Parte No. MC-122 (Sub-No. 1)	- Implementation of Intercorporate Hauling Reform Legislation	- Notice of Interim Rules - 7/2/80 - Notice of Final Rules - 12/24/80 - Challenged in court: -American Trucking Associations, Inc. and Georgia Motor Trucking Association Inc. v. Interstate Commerce Commission Docket No. 81-7092 (11th Cir.) -Argument heard - 2/1/82 -Remanded to Commission - 4/5/82 - Notice of Court Action published 6/17/82, 47 FR 26142.

Ex Parte No. MC-122 (Sub-No. 2)	- Lease of Equipment and Drivers to Private Carriers	- Proposed policy statement - 12/24/80 - Oral argument - 10/14/81 - Policy statement - 2/17/82 - Challenged in court: -*Ryder Truck Lines, Inc. v. Interstate Commerce Commission*, *Docket No. 82-521* (11th Cir.) -Commission rules stayed - 3/25/82 -Briefing to be completed - 7/16/82
Ex Parte No. MC-122 (Sub-No. 3)	- Interpretation - Intercorporate Hauling	- Petition for Declaratory Order - 12/24/81 - Final Interpretive Rules - 12/24/81 - Challenged in court: -*American Trucking Association, Inc., and Georgia Motor Trucking Association, Inc v. Interstate Commerce Commission*, *Docket No. 82-8060* (11th Cir.)

		-Proceeding dismissed following decision in Docket No. 81-7-92 re: Ex Parte No. MC-122 (Sub-No. 1) - 5/26/82
Ex Parte No. MC-142	- Elimination of Gateway Restrictions and Circuitous Route Limitations (49 CFR Part 1042)	- Notice of Proposed Rulemaking - 9/16/80 - Final Rules - 12/24/80 Published 12/31/80, 45 FR 86741.
Ex Parte No. MC-142 (Sub-No. 1)	- Removal of Restrictions from Authorities of Motor Carriers of Property (49 CFR Parts 1137 & 1002.2)	- Notice of Proposed Rulemaking - 9/16/80 - Final Rule - 12/24/80 - Challenged in court: -*American Trucking Associations, Inc., et al. v. Interstate Commerce Commission,* 659 F.2d 452 (5th Cir., 1981) -Decision on petition to compel enforcement of the court's mandate, Docket No. 81-4026 - 2/25/82 -U.S. Supreme Court granted I.C.C. request for stay of writ of mandamus - 3/29/82. -Notice of intent to reopen served 4/4/83.

		Published 4/7/83 (48 FR 15167). Notice of proposed rulemaking served 8/8/83. Published 8/10/83 (49 FR 36290). Comments due 9/26/83.
Ex Parte No. MC-142 (Sub-No.2)	- Freight Forwarder Restrictions (49 CFR 1137)	- Notice of Proposed Rulemaking - 3/1/81 - Final Rules - 9/18/82 - Challenged in court - Notice of judicial stay served 10/27/82. Published 10/28/82 (47 FR 47842).
Ex Parte No. MC-143	- Owner-Operator Food Transportation (49 CFR Parts 1138 and 1311	- Notice of proposed rulemaking - 9/16/80 - Final Rules - 3/31/81 - Challenged in court: *American Trucking Association, Inc. and Common Carrier Conference - Irregular Route* v. *Interstate Commerce Commission*, Docket No. 81-1602 (D.C. Cir., filed 5/29/81) -Held in abeyance pending Commission's decision denying ATA petition for reconsideration - 2/10/82

		-Now procedurally active - briefing stage, awaiting reply brief of petitioners, hearing date not yet set.
Ex Parte No. MC-152	- Policy Statement Regarding Duplicate Operating Rights	- Proposed Policy Statement - 5/12/81 - Final Policy Statement served 11/18/81. Published 11/20/81 (46 FR 57053).
Ex Parte No. MC-156	- Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates	- Decision served 1/6/83, (48 FR 751). - Challenged in court
Ex Parte No. MC-157	- Investigation into Canadian Law and Policy Regarding Applications of American Motor Carriers for Canadian Operating Authority	- Notice of Investigation and Request for Comments - 2/11/82 - Oral Hearings Complete - Decision served 10/18/82 [132 M.C.C. 870]
Ex Parte No. MC-165 (Sub-No. 1)	- Motor Contract Carriers of Property - Proposal to Allow Issuance of Permits Authorizing Industry-Wide Service.	- Notice of proposed policy statement and proposed change in the Form OP-1 served 5/27/83. Published 6/1/83, 48 FR 24397.
No. MC-C-3437 (Sub-No. 12)	- Ex-Air Motor Traffic	- Final Rules - 7/3/80

No. MC-C-10796	- Shipment Weighing 100 Pounds or Less	- Notice of Declaratory Order Proceeding - 3/18/81 - Declaratory Order - 9/10/81. Published 9/11/81 (46 FR 45447).
FINANCE CASES		
Ex Parte No. 55 (Sub-No. 44)	- Rules Governing Finance Applications	- Interim Rules - 7/2/80 - Final Rules - 1/16/81
Ex Parte No. 55 (Sub-No. 57)	- Exemption of Motor Carrier Finance Transactions.	- Notice of proposed exemption and rulemaking served 6/7/83. Published 6/8/83 (48 FR 26485).
Ex Parte No. MC-79 (Sub-No. 1)	- Control of Duplicate Operating Rights	- Notice of Proposed Rulemaking - 5/12/81 - Final Rules - 11/18/81 Published 11/20/81 (46 FR 57053).
Ex Parte No. MC-141	- Policy Statement on Motor Carrier Pooling Applications	- Notice of Proposal to Issue Statement of General Policy - 7/11/80 - Final Rules - 4/10/81 and 1/15/82
RATES CASES		
Ex Parte No. MC-82	- New Procedures in Motor Carrier Revenue Proceedings	- Final Rules - 12/24/81 - Final Rules Amended - 3/5/82.

Ex Parte No. MC-88	- Detention of Motor Vehicles - Nationwide	- Notice of Proposed Rulemaking - 3/11/81 - Final decision eliminating uniform rules - 11/9/82.
Ex Parte No. MC-98 (Sub-No. 1)	- Investigation Into Motor Carrier Classification	- Interim Decision - 5/13/81 - Final decision served 3/9/83. Clarification served 6/28/83.
Ex Parte No. MC-128	- Revenue Need Standards in Motor Carrier General Increase Proceedings	- Proposed Rules - 6/25/79 - Oral Argument Notice 1/17/80 - Final decision discontinuing proceeding served 7/28/83.
Ex Parte No. MC-137	- No Suspend Zone -- Motor Carriers of Property	- Notice of Proposed Rulemaking - 1/28/80 - Proceeding Discontinued - 5/22/81
Ex Parte No. MC-145 (embraces Ex Parte No. 77 (Sub-No. 2))	- Cancellation of Motor Carrier Joint Rates and Through Routes	- Notice of Proposed Rulemaking - 11/26/80 - Final decision served 1/11/83 (48 FR 1312).
Ex Parte No. MC-158	- Rates for a Named Shipper or Receiver	- Notice of proposed rulemaking served 6/29/82.
Ex Parte No. MC-166	- Pricing Practices of Motor Common Carriers of Property since the Motor Carrier Act of 1980	- Notice opening the proceeding and requesting comments served 10/29/82; Published 11/1/82, 47 FR 49481.

Ex Parte No. MC-169	- Expansion of Zone of Reasonableness for Motor Common Carriers of Property and Freight Forwarders [49 CFR 1309, 1310]	- Notice of proposed rules served 5/6/83. Published 5/9/83, 48 FR 20780.
Ex Parte No. 230 (Sub-No. 6)	- Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)	- Notice of Proposed Rulemaking - 2/19/81 - Awaiting final decision.
Ex Parte No. 261 (Sub-No. 1)	- Tariffs-Joint Rates-Through Routes-Freight Forwarders & Nonvessel Operating Common Carriers by Water (NVO)	- Notice of Proposed Rulemaking - 12/24/80 - Final Rules - 7/9/81
Ex Parte No. 297	- Rate Bureau Investigation (Shipper Affiliation) (Notice of Reopening of Proceeding)	- Notice Reopening Proceeding - 1/21/81 - Notice of Discontinuing Proceeding - 11/4/81
Ex Parte No. 297 (Sub-No. 5)	- Motor Carrier Rate Bureaus Implementation of P.L. 96-296.	- Notice of Proposed Policy & Interim Requirements - 8/21/80 - Final decision - 12/30/80 - Modification of Final Rules - 5/11/81, 11/25/81 Challenged in court: American Trucking Association, Inc., v. Interstate Commerce Commission, Docket No. 80-7674 (5th Cir.)

No. 37416	- Identification of Rates Filed Under Zone of Rate Freedom by Motor Common Carriers of Property and Freight Forwarders	- Final Rules - 8/1/80

SMALL BUSINESS ASSISTANCE OFFICE

Ex Parte No. MC-150	- Minority Participation in the Motor Carrier Industry	- Policy Statement - 1/8/81. (46 FR 3077)
Ex Parte No. MC-150 (Sub-No. 1)	- Report on Minority Participation in the Surface Transportation Industry	- Report based on Commission hearings - 8/7/81

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Ex Parte No. MC-43 (Sub-No. 11)	- Lease and Interchange of Vehicles	- Notice of Proposed Rulemaking - 11/3/80 - Final Rules - 2/17/82
Ex Parte No. MC-147	- Information Required on Receipts and Bills--Responsibility for Loading and Unloading Motor Vehicles	- Notice of Proposed Rulemaking - 10/23/80 - Notice of Withdrawal of Proposed Rule - 2/9/82
Ex Parte No. MC-75 (Sub-No. 3)	- Agricultural Cooperative Exemption	- Notice of Proposed Rulemaking - 6/8/81 - Awaiting Decision
No. MC-C-10792	- Petition for Declaratory Order Livestock and Poultry Feed Exemption	- Notice of Declaratory Order Proceeding - 1/6/81 - Notice of Final Order - 4/1/81

		- Challenged in court: -*Dahlsten Truck Lines v. Interstate Commerce Commission*, Docket No. 81-1596 (D.C. Cir.) -Decision - Commission affirmed - 2/8/82

MISCELLANEOUS

Ex Parte No. MC-165	- Procedures for Providing Notice of Specified Applications Through An "ICC Register" in Lieu of "Federal Register" Notice	- Final Rules, Federal Register Notice. Cleared 7/8/83, served 7/13/83.
Ex Parte No. 444	- Electronic Filing of Tariffs	- Advance notice of proposed rulemaking served 3/8/83.
No. 37321	- Revision of Tariff Regulations - All Carriers	- NPR served 7/7/83.

SUMMARY OF SIGNIFICANT MOTOR CARRIER ACT PROCEEDINGS UNDER JUDICIAL REVIEW

Approximately 282 court cases involving carrier licensing have been filed since enactment of the 1980 Act. Many of these cases involve routine licensing proceedings; however, because the law in the area of motor carrier regulation has been in a state of flux since enactment of the 1980 Act, even routine licensing cases can resolve doubts about Commission policy in this area and become significant cases. The Commission's challenged court actions also include some of the most significant agency decisions attempting to implement broad policy changes through rulemakings, or interpreting different sections of the Act as they apply in different factual contexts. We have listed the court cases involving the clearly important Commission proceedings and those court decisions that are important for their precedential value.

For convenience, we have broken the cases down into subject areas.

1. APPLICATIONS

A. Which Law Governs

Central Freight Lines, Inc. v. ICC
No. 81-4219 (5th Cir.)
(G.C. 4488)

Status: Case decided, 669 F.2d 1063 (1982). Commission's application of new law affirmed.

The Commission granted authority using 1980 Act standards. Petitioners asserted that pre-1980 law applied, but the court held that the new law governs.

B. Applications Under the 1980 Act

(1) Procedural Rules
American Transfer & Storage Co. v. ICC
No. 81-4072 (5th Cir.)
(G.C. 4403)

Status: Awaiting decision, argued 4/19/82. Commission adopted final procedural rules in Ex Parte No. 55 (Sub-No. 43) to govern motor carrier licensing cases.

(2) Burden of Proof in Application Cases

Northeast Express, Inc. v. ICC
No. 80-1022 (3d Cir.)
(G.C. 4364)

Status: Dismissed on petitioner's motion. Commission interpreted 1980 Act's allocation of burden of proof in MC-124920 (Sub-No. 14), LaBar's Inc. Extension - Mountain Top Insulation. Commission reconsidered and has issued a further decision.

(3) Scope of Authority in Restriction Removal Proceedings

Many petitions for review of Commission decisions removing restrictions or broadening narrowly drawn authority were filed after the 1980 Act, although the number filed has decreased since the Commission's restriction removal unit has now been dissolved. The cases listed are the most significant.

(a) General Restriction Removal Rules

American Trucking Associations v. ICC
No. 81-4026 (5th Cir.)
(G.C. 4367)

Status: Case decided, 659 F.2d 452 (1982); Commission reversed in part and affirmed part. Cert. petition denied March 7, 1983; No. 82-86.

In Ex Parte No. 55 (Sub-No. 43A) and Ex Parte No. 142 (Sub-No. 1) the Commission determined guidelines for the territorial and commodity scope of authorities and set out rules for removing restrictions. The court found that the Commission could not grant commodity authority significantly exceeding what an applicant asked for. Related litigation: Mandamus petition filed to compel Commission to comply with court's order in ATA v. ICC; court granted petition but Supreme Court stayed order pending determination of petition for certiorari.

Also; 5th Cir. found itself without jurisdiction over Commission decisions issued after court's decision but before mandamus order.

After cert. petition was denied, the 5th Circuit's mandamus order was reinstated.

On August 2, 1983 ATA filed a petition with the 5th Circuit to hold the Commission in contempt of court seeking damages, imprisonment of the Commissioners, and the issuance by the Commission of a notice of rulemaking in conformance with the court's orders. The Commission issued notice of proposed rulemakings in Ex Parte 55 (Sub-No. 43A) and Ex Parte MC-142 (Sub-No. 1) on August 8, 1983. The petition for contempt was not dismissed as moot and is currently pending before the court.

(b) Removal of Bulk Commodities Restrictions from Existing Authority

(i) Steere Tank Lines, Inc. v. ICC
No. 81-4169 (5th Cir.)
(G.C. 4450)

Status: Case decided, 666 F.2d 255 (1982); Commission reversed. Cert. petition denied March 7, 1983; No. 82-41.

Commission removed restriction on authority limiting carrier to hauling a particular commodity in bulk and permitted carriage of all commodities in bulk. Court reversed after finding that there was no evidence that the applicant was "fit, willing, and able" to haul every other kind of bulk commodity.

(ii) Ritter Transportation, Inc. v. ICC
No. 81-2116 (D.C. Cir.)
(G.C. 4613)

Status: Case decided, 684 F.2d 86 (1982), Commission reversed. Cert. petition denied March 7, 1983; No. 82-594.

(Same facts and result as in Steere)

(iii) Ritter Transportation, Inc. v. ICC
No. 81-1023 (D.C. Cir.)
(G.C. 4679)

Status: Case decided, 697 F.2d 1193 (1983); Commission reversed.

Commission broadened carrier's existing authority to transport particular commodities in bulk to all commodities in bulk. The court found that even if it could infer that the carrier was fit to carry all commodities in bulk from the breadth of its prior authority to carry itemized bulk commodities, there was no evidence that the Commission made the inference because no fitness finding was made.

(iv) Steere Tank Lines, Inc. v. ICC
No. 81-4328 (5th Cir.)
(G.C. 4559)

Status: Case decided, 694 F.2d 413 (1983); Commission affirmed.

The Commission authorized the broadening of narrow commodity descriptions in numerous operating certificates to three broad categories -- building materials, commodities in bulk, and chemicals and related products. Instead of focusing on fitness, as the courts in the Steere and Ritter cases did, the court focused solely on the Commission's statutory mandate to broaden "reasonably" certificates. It concluded that the carrier's existing authority made it clear that the carrier was an experienced bulk carrier and that the broadening was reasonable.

(c) Other Restrictions

(i) B.J. McAdams, Inc. v. ICC
No. 82-1271 (D.C. Cir.)
(G.C. 4734)

Status: Case decided, 698 F.2d 498 (1983); Commission affirmed in part and reversed in part.

Commission authorized the territorial expansion of applicant's authority from designated plantsites to county-wide authority, and authorized service to Hawaii. The court found that the petitioner had standing to challenge the grant; that applicant had proved its fitness, willingness, and ability to provide service within the scope of the two-county authority but that the Hawaii authorization was overly broad and unlawful; and that the Commission properly declined to consider allegations of fraud in the context of a restriction removal proceeding.

(4) Scope of Authority in New Application Proceedings

(a) General Commodities Authority

(i) Port Norris Express Co., Inc. v. ICC
No. 81-2884 (3rd Cir.)
(G.C. 4630)

Status: Case decided, 687 F.2d 803 (1982). Commission reversed.

Commission granted general commodities authority without imposing a bulk restriction. Court reversed, finding no evidence of need or fitness for bulk service.

(ii) Port Norris Express Co., Inc. v. ICC
No. 82-3321 (3rd Cir.).
(G.C. 4845)

Status: Case decided, (March 8, 1983, unpublished per curiam opinion). Commission affirmed.

Commission granted general commodities authority without a bulk restriction. We argued that the applicant had the general capacity to perform bulk service because, as a result of technological innovations, its equipment could be converted to permit the transportation of bulk commodities. We also argued that the shippers expressed a need for bulk service. Court affirmed.

(b) Specified Commodities Authority

Several court actions are pending involving judicial review of the Commission's policy declining to impose bulk restrictions in grants of specified, as opposed to general, commodites. The Commission views the imposition of bulk restrictions in grants of specified commodities as promoting inefficient transportation and preventing carriers from providing a complete service. Two examples of those pending cases follow.

(i) Port Norris Express Co., Inc. v. ICC No. 83-3122 (3rd Cir.)
(G.C. 5021)

Status: Briefed; awaiting argument.

The Commission granted "clay, concrete, glass or stone products" without a bulk restriction. Petitioner claims that the Commission cannot authorize the unrestricted authority without a separate analysis of applicant's fitness to perform and evidence of public need for bulk service.

(ii) Steere Tank Lines, Inc. v. ICC
Nos. 82-4175, 83-4086, 83-4212, and 83-4322 (5th Cir.)
(G.C. 4784, 4995, 5020, 5089)

Status: To be briefed.

Commission granted applicant authority to perform motor carrier service without a bulk restriction subject to the applicant's verification that it is willing to accept unrestricted authority. After the applicant did so, the Commission found that applicant had met the condition. Petitioner argues that the applicant failed to make a prima facie case demonstrating public need to provide bulk service and its fitness, willingness, and ability to perform bulk service.

(5) Proof and Need for Authority

(a) Refrigerated Transport Co., Inc. v. ICC
No. 81-7333 (11th Cir.)
(G.C. 4426)

Status: Case decided, 673 F.2d 1196 (1982); Commission affirmed.

Commission granted nationwide authority. Petitioner argued that nationwide need was not shown, but court held that a representative showing of need (by 1 shipper and applicant's own vice president) was sufficient.

(b) Kenosha Auto Transport Corp. and Boat Transit, Inc. v. US
No. 81-1368 (D.C. Cir.)
(G.C. 4417)

Status: Case decided, 684 F.2d 1020. Commission affirmed.

Commission granted authority to transport boats from New England to all points in the U.S. based on evidence of one boat distributor.

(c) J.H. Rose Truck Line, Inc. v. ICC
No. 81-4286 (5th Cir.)
(G.C. 4524)

Status: Case decided, 683 F.2d 943 (1982); Commission affirmed.

Commission granted virtually nationwide general commodities authority without any shipper evidence, relying instead on applicant's past operations. Court read Motor Carrier Act as imposing substantial burden on protestants.

(d) J.H. Rose Truck Line, Inc. v. ICC
No. 81-4351 (5th Cir.)
(G.C. 4568)

Status: Case decided, 683 F.2d 952 (1982); Commission affirmed.

Commission granted 20-state general commodities authority based on traffic abstracts of trip lease operations (but no shipper evidence). Court again stressed protestants heavy burden of proof.

(e) Port Norris Express Co., Inc. v. ICC
No. 81-3019 (3rd Cir.)
(G.C. 4652)

Status: Case decided, 697 F.2d 497 (1983); Commission affirmed.

Commission granted 6-state bulk commodity authority based on 4 shipper statements that, in response to the request for representative points, only recited the scope of authority sought. The court found that the applicant's description of its existing operations and the shippers' statements was sufficient evidence.

(f) C&H Transportation Co., Inc. & J.H. Rose Truck Line, Inc. v. ICC
No. 81-4269 (5th Cir.)
(G.C. 4511)

Status: Case decided, 704 F.2d 834 (1983); Commission affirmed.

The Commission granted nationwide authority to transport metal products, machinery, and transportation equipment to a new carrier with no previous ICC authority based on shipper evidence of business practices of moving commodities to and from job sites and auction sites, and the shippers' listings of representative points and states. The court stressed the protestant's heavy burden of proof.

(g) C&H Transportation Co., Inc. and J.H. Rose Truck Line, Inc.
No. 81-4361 (5th Cir.)
(G.C. 4577)

Status: Case decided, 740 F.2d 850 (1983); Commission reversed.

The Commission granted nationwide authority to haul construction, mining, industrial, electrical, and agricultural machinery equipment to a new carrier based on shipper support. The court affirmed the Commission's fitness finding but reversed on the need issue, after finding that 9 shippers stated that they shipped "between points in the United States" while only 1 shipper mentioned a business practice of moving goods between job sites and listed 6 contiguous states. The court contrasted the public need evidence here with that in C&H I where specific points or states were named and there was evidence of shippers' business practice justifying a nationwide grant.

(h) Deaton, Inc. v. ICC
No. 81-7828 (11th Cir.)
(G.C. 4604).

Status: Case decided, 693 F.2d 128 (1983); Commission affirmed.

Commission granted 12-state specified commodities authority. The court found that the evidence established a need for the service and it emphasized that carriers must show a specific harm to the public interest. It adopted the Commission's standard that proof of harm to established carriers will satisfy this standard only if it "will so damage them as to deprive the public of essential services."

(i) Refrigerated Transport Co., Inc. v. ICC
No. 82-8057 (11th Cir.)
(G.C. 4697).

Status: Case decided, 707 F.2d 497 (1983); Commission affirmed.

Applicant sought to transport beverages and containers between points in 8 states but the Commission broadened the commodity authorization to food and related products. The court affirmed finding that the combination of shipper support and the potential for carrier efficiencies warranted a non-radial grant and the broadened commodity description. As to fitness, the court found that applicant could acquire refrigeration equipment as necessary once the certificate was issued. With regard to National Transportation Policy findings, the court found that the Commission's comments on the importance of efficient operations was sufficient.

(j) RTC Transportation, Inc. v. ICC
No. 82-8091 (11th Cir.)
(G.C. 4706)

Status: Case decided, 708 F.2d 620 (1983); Commission affirmed.

Commission authorized radial, 24-state authority to transport food and related products based on 1 shipper. The court affirmed finding that the shipper's plantsites were sufficiently representative of a need through-out 2 states and the grant of a 24-state area was warranted because the shipper's customers vary and its transportation requirements are increasing. As to fitness, the court found that specific evidence of ability to transport all products within the description is unnecesaary -- only a representative showing is needed. The court reiterated the protestant's difficult burden of proof and found adequate the Commission's NTP findings.

(6) Fitness

(a) Baggett Transportation Co. v. US
No. 81-7248 (11th Cir.)
(G.C. 4413)

Status: Case decided, 666 F.2d 524 (1982); Commission affirmed.

Commission granted explosives authority. Petitioners alleged applicants were unfit, but court held that existing authority, knowledge of explosives transportation, and ownership of equipment proved fitness.

(b) Steere Tank Lines v. ICC
No 81-4261 (5th Cir.)
(G.C. 4508)

Status: Case decided, 675 F.2d 103 (1982); Commission affirmed.

Commission granted 13-state authority. Petitioner alleged applicant unfit because it had not demonstrated it could serve entire 13-state area. Court held that "there is no requirement that the carrier be able, quantitatively, to perform all or any substantial part of the transportation in all covered areas."

(c) Wilkett Trucking Company v. ICC
No. 82-1373 (D.C. Cir.)
(G.C. 4751)

Status: Case decided, 710 F.2d 861 (1983); Commission reversed.

The Commission denied the application based on its owner's drug and second-degree murder convictions. The court reversed, finding that although the owner's crimes may be relevant, the Commission improperly focused on the applicant's owner's non-transportation related crimes rather than the carrier's past lawful operations.

(7) Contract Carriers

(a) Rulemakings

Central & Southern Motor Freight Tariff Association, Inc. et al. v. US
No. 83-1581 (D.C. Cir.)
(G.C. 5104)

Status: To be briefed

Petitioners seek review of the Commission's decision in Ex Parte MC-165, exempting motor contract carriers from tariff filing requirements. On July 20, 1983 the court stayed the MC-165 rulemaking pending judicial review but indicated on July 29, 1983 that individual carriers that have been operating under provisional tariff exemptions may continue to operate without filing tariffs.

(b) Contract Carrier Applications

(i) Aero Mayflower Transit Co. v. ICC
No. 81-2772 (7th Cir.)
(G.C. 4624)

Status: Case decided, 699 F.2d 938 (1983); Commission reversed.

Commission barred common carriers from protesting contract carrier applications and permitted contract carriage of household goods by common carriers. The court found an abuse of discretion in the "unanticipated adjustment of the protest standards in this case." It did not deny that the Commission has the power to narrow its protest standards, but concluded that the Commission could not apply the new standards without advising the carriers in advance of the showing they would need to make.

(ii) Alamo Express, Inc. v. ICC
No. 81-4112 (5th Cir.)
(G.C. 4421)

Status: Case decided, 673 F.2d 852 (1982); Commission affirmed.

Commission granted a common carrier nationwide authority to act as contract carrier for its subsidiary in this first case addressing new contract carrier criteria under 49 U.S.C. 10923.

(iii) Global Van Lines, Inc. v. ICC
Nos. 82-4099, 82-4124, &
82-4158 (5th Cir.)
(G.C. 4736, 4747, & 4767)

Status: Case decided, 704 F.2d 829 (1983); Commission affirmed.

Commission granted nationwide household goods contract carriage. The court agreed with the Commission that the applicant's proposal to serve a national account shipper satisfied the "distinct needs" test of contract carriage, 49 U.S.C. 10102(13)(B).

This is the first affirmance on the merits of the Commission's post-1980 Act policy of granting household goods carriers contract carriage authority.

(iv) Aero Mayflower Transit Company, Inc. v. ICC
No. 81-1951 (D.C. Cir.)
(G.C. 4560)

Status: Case decided, 711 F.2d 224 (1983); Commission affirmed.

Commission granted nationwide household goods contract carriage. The court affirmed the Commission's decision that the applicant's proposal satisfied the contract carriage "exclusive use" test because the applicant proposed to dedicate equipment to the "preferential use" of its supporting shipper, a freight forwarder and commonly controlled affiliate, and the equipment would be available at all times for the shipper and would be moved side-by-side with other shippers' freight if the supporting shipper consents.

(v) Port Norris Express Co., Inc. v. ICC
No. 82-3416 (3rd Cir.)
(G.C. 4882)

Status: Case decided, April 28, 1983 (unpublished opinion); Commission affirmed.

In this restriction removal proceeding, the Commission expanded applicant's contract carrier authority to nationwide authority based on 49 U.S.C. 10923(d)(1). We argued that section 10923(d) prohibits the Commission from requiring a contract carrier of property to geographically limit its operation and mandated the authorization of nationwide service here because the licensing and restriction removal provisions must be read together. Court affirmed without opinion.

(8) Owner-Operators

(a) Rulemakings

(i) American Trucking Associations, Inc. v. ICC
No. 81-1602 (D.C. Cir.)
(G.C. 4476)

Status: Case decided, 697 F.2d 1146 (1983); Commission affirmed.

Commission adopted rules in Ex Parte No. 143 to implement 49 U.S.C. 10922(b)(4) which allows owner-operators to obtain authority to haul food. Petitioners contended that Commission erred by defining "owner" as anyone with at least 10 percent ownership of a vehicle.

The court accepted the 10 percent ownership figure as not beyond the Commission's discretion and approved the rationale of encouraging family corporations and other small business to enter the industry.

(ii) Central Forwarding, Inc. v. ICC
No. 81-4437 and consolidated cases (5th Cir.)
(G.C. 4615)

Status: Case decided, 698 F.2d 1266 (1983); Commission reversed.

The court reviewed the Commission's rules (Ex Parte 311 (Sub-No. 4), Modification of Motor Carrier Fuel Surcharge Program, promulgating a fuel reimbursement program for owner-operators, characterized the program as a wage, and found the Commission without jurisdiction to set wages in the transportation industry.

The court found that the power to promote continuous and adequate transportation conferred by Section 11101(b) does not include the power to mandate fuel reimbursement because the Section's legislative history indicates that Congress intended to prohibit Commission regulation of trucking industry wages. The court suggested the scope of the Commission's jurisdiction may depend in part on the substantiality of the the regulation upon the parties. The court found that the Commission may have more power to respond in an emergency situation.

(iii) Wales Transportation, Inc. v. ICC
No. 83-4026 (5th Cir.)
(G.C. 4979)

Status: Briefed; Oral argument set for Sept. 27, 1983. Commission issued rules in Ex Parte No. MC-43 (Sub-No. 13), Lease and Interchange of Vehicles, to amend its rules governing use of leased equipment by ICC-licensed motor carriers. Petitioners contend that the rules are an attempt to regulate labor-management and therefore beyond the Commission's statutory powers, without a rational basis, and not reasonably related to the stated purpose for their promulgation.

(9) Mexican - Domiciled Carriers

G.I. Trucking Co. v. USA
No. 81-7298 (9th Cir.)
(G.C. 4445)

Status: Case decided, 708 F.2d 1421 (1983); Commission reversed.

Commission granted Mexican-domiciled carrier general commodities authority between the California-Mexico border and three California cities. Petitioners contended that the national transportation policy required the Commission to considered nonreciprocity when it decides whether to authorize a Mexican motor carrier to operate in the U.S. The court reversed finding that the Commission had failed to consider a relevant argument -- the reciprocity issue -- but did not discuss our contention that the Act (prior to amendment in the Bus Act) did not require consideration of reciprocity.

(10) Rail-Affiliated Motor Carriers

(a) American Trucking Associations, Inc. v. ICC
Nos. 82-1115, 82-1116, and 82-1119 (10th Cir.)
(G.C. 4698, 4699, & 4700)

Status: Case decided, 703 F.2d 459 (1983). Commission affirmed in substantial part.

Commission granted unrestricted authority (not restricted to handling of freight with its rail parent) to a rail-affiliated carrier. The court affirmed, finding that the Commission adequately considered the applicant's affilation with its parent railroad. It found that the Commission's finding amounted to the equivalent of a finding that "special circumstances" exist to grant unrestricted authority, and that substantial evidence supports the Commission's decision. The court remanded the fourth application proceeding because the Commission did not exclude household goods from the general commodities grant.

(b) American Trucking Associations, Inc. v. ICC
No. 83-4039 (5th Cir.)
(G.C. 4981)

Status: Briefed; Awaiting argument.

The Commission eliminated the "special circumstances" doctrine as a consideration in future applications for motor carrier operating authority by railroads or rail-affiliated motor carriers. Petitioners maintain that the decision exceeds the agency's statutory authority, that the 1980 Act does not support the elimination of "special circumstances" doctrine, and that industry conditions do not warrant elimination of the doctrine.

(11) Freight Forwarders

(a) Rulemakings

Global Van Lines, Inc. v. ICC
No. 82-4284 (5th Cir.)
(G.C. 4859)

Status: Argued; Awaiting decision. Judicial stay entered October 8, 1982.

Commission adopted rules in Ex Parte No. MC-142 (Sub-No. 2), Freight Forwarder Restrictions, that made the motor carrier restriction removal rules applicable to freight forwarder authority.

Petitioners contend that the rules violate ATA, that the Commission lack statutory authority to promulgate them, and that the rules are without a rational basis insofar as they allow freight forwarders of used household goods to broaden their service to other categories of household goods and allow certain categories of intermodal and import export forwarders to expand to domestic surface forwarding.

(b) Applications

Astron Forwarding Co. v. ICC
No. 82-2029 (D.C. Cir.)
(G.C. 4880)

Status: Case decided, 711 F.2d 391 (1983); Commission affirmed.

Commission granted general commodities, nationwide freight forwarder authority. The court found that the Commission may grant an unrestricted forwarding permit without requiring separate evidence of the applicant's fitness to forward household goods, as well as general, commodities.

(12) Special Grants of Authority

B.J. McAdams, Inc. v. ICC
Nos. 81-2392 and 82-1094 (D.C. Cir.)
(G.C. 4673 and 4696)

Status: Case decided (November 2, 1982, unpublished per curiam order); Commission affirmed.

Commission in Ex Parte No. 55 (Sub-No 43C) adopted regulations governing grants of motor authority to substitute for abandoned rail service under 49 U.S.C. 10922(b)(4)(B). Petitioner claims Commission cannot grant nationwide authority. Court affirmed without opinion.

II. RATEMAKING

A. American Trucking Associations v. US
No. 80-7674 (11th Cir.)
(G.C. 4276)

Status: Case decided, 688 F.2d 1337 (1982); Commission affirmed in part and reversed in part. Petition for cert. granted on June 20, 1983 (No. 82-1643) and currently being briefed.

Commission implemented 49 U.S.C. 10706(b) Rate Bureau provisions with intepretive rules. Petitioners oppose Commission rejection of tariffs formulated in violation of rate bureau procedures, and they object to the rule permitting carriers to exercise their right of independent action to instruct rate bureaus not to give advance notice of the independently filed rates. Petitioners also assert that the Commission has no authority to promulgate the rules and that the rules are procedurally defective. Court affirmed the Commission's power to reject tariffs that violate rate bureau agreements so long as the rejection occurs before the tariffs become effective and affirmed portions of the rule pertaining to advance notice of independent action by individual carriers. It invalidated portions of the rules dealing with cancellation of outstanding special permission authorities for failure to comply with notice and comment procedures. The Commission did not appeal further the special permission holding but petitioned the Supreme Court for review of the court's invalidation of the rules insofar as they authorize rejection of effective tariffs.

B. National Small Shipments Traffic Conference, et al. v. ICC
No. 83-1884 (D.C. Cir.)
(G.C. 5156)

Status: To be briefed

In Ex Parte MC-128, the Commission discontinued an investigation into revenue adequacy standards in motor carrier general increase proceedings.

III. EXEMPT PRIVATE CARRIAGE

A. American Trucking Associations v. ICC
No. 81-7092 (11th Cir.)
(G.C. 4378)

Status: Case decided; 672 F.2d 850 (1982); Commission affirmed in part and reversed in part.

In Ex Parte No. MC-122 (Sub-No. 1) Commission implemented 49 U.S.C. 10924(b) with rules permitting compensated intercorporate hauling by (1) transportation-only subsidiaries, including regulated motor carriers; and (2) non-incorporated entities. Court held (1) permissible but (2) beyond statute.

B. American Trucking Associations v. ICC
No. 82-8060 (11th Cir.)
(G.C. 4703)

Status: Case dismissed.

In Ex Parte No. MC-122 (Sub-No. 3) Commission interpreted MC-122 (Sub-No. 1) as permitting a carrier subsidiary to engage in compensated intercorporate hauling for an affiliated transportation company, as long as the material carried was not tendered as cargo to the affiliated transportation company.

C. Ryder Truck Lines, Inc. v. US and Bowman Transportation, Inc., et al. v. US
Nos. 82-5247 & 82-8133
(G.C. 4721 & 4726)

Status: Argued, Awaiting decision. A judicial stay of the Commission's decision was entered March 25, 1982.

Commission issued a general statement of policy (Ex Parte MC-122 (Sub-No. 2)), announcing the criteria it would use in future adjudications to distinguish for-hire from private carriage when a private carrier leases equipment and drivers from a single source. Petitioners argue that the Commission erred by regarding the 1980 Act as a basis for reshaping its leasing policy, that the Commission failed to assess properly the effect of the new policy, and that Commission improperly failed to prepare an Environment Impact Statement and a Statement of Energy Impact.

D. Osborne Truck Lines, Inc. v. ICC
No. 82-8787
(G.C. 4971)

Status: Briefed; Awaiting oral argument. A judicial stay was entered January 5, 1983. The court has recently advised the Commission that a ruling in this proceeding will be delayed until after Ryder Truck Lines, Inc. v. ICC, No. 82-5247, is decided.

Commission amended existing rules to allow private carriers to lease their equipment to ICC regulated motor carriers on a less than 30-day basis. Petitioners question the Commission's authority to amend its rules, argue that the rules are without a rational basis, and that they are not reasonably related to the purpose of the statute.

IV. CANADIAN RECIPROCITY

The Commission has recently been explicitly considering whether Canadian transportation law unfairly discriminates against American carriers by making it more difficult for Americans to obtain Canadian licenses than it is for Canadians to obtain American licenses. The following two cases are examples of applications involving this issue.

A. E. J. Bourque Transport, Ltd. v. ICC,
No. 82-1492 (D.C. Cir.)
G.C. 4778)

Status: Case dismissed

The Commission reopened an application proceeding to consider the Canadian reciprocity issue. Petitioner argued the reopening constitutes unlawful "flagging."

B. Midland Transport, Ltd. v. ICC
No. 82-1325 (D.C. Cir.)
(G.C. 4744)

Status: Case dismissed.

The Commission reopened an application proceeding and imposed a term limitation on a certificate. Petitioner argued the Commission has unlawfully "flagged" the application.

APPENDIX III

1. Minority and Female Motor Carrier Listings, September 1983.

2. Small Community Service Study as Mandated by Section 28 of the Motor Carrier Act, September 1, 1982.

3. Staff Report No. 9, Highlights of Activity In the Property Motor Carrier Industry, July 1983.

4. Customer Pickup of Food and Grocery Products Under Section 8 of the Motor Carrier Act of 1980, July 1, 1983.

5. Executive Summary to Uniform State Regulations, Motor Carrier Act of 1980, Section 19.

6. The latest earnings and traffic volume data for the 100 largest motor carriers of property.

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Minority and Female Motor Carrier Listings

Office of Transportation Analysis
Interstate Commerce Commission
September 1983

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF TRANSPORTATION ANALYSIS

September 1, 1983

MINORITY AND FEMALE MOTOR CARRIER LISTINGS

The Office of Transportation Analysis (OTA) is pleased to present an update of our list of Minority and Female Owned Motor Carriers holding interstate operating authority.

OTA used direct mail surveys to contact all carriers receiving operating authority since our last update and those identified as being minority or female owned. Notices were also placed in the Federal Register and transportation trade publications in an attempt to reach as many carriers as possible.

For the purposes of definition, a firm is minority or female owned if a member(s) of a minority group or female(s) owns more than 50 percent of the company's stock.

Minority and Female Owned Motor Carriers are shown on separate lists. A carrier owned by a female who is also a member of a minority group is reported on the minority carrier list. Carriers are listed alphabetically by State.

Any questions may be directed to Emily White, telephone number (202) 275-0788.

Wm R Southard

Wm. R. Southard
Director

MINORITY AND FEMALE MOTOR CARRIER LISTINGS

There were no responses for minority or female owned carriers for the following States:

Minority	Female
Iowa	District of Columbia
Maine	Vermont
Rhode Island	Canada
South Dakota	
Vermont	

* * * * * *

ALABAMA

Minority Owned Carriers

ANHAY INC	910 CHICHONA DR	BIRMINGHAM	AL 35214
FONT TRUCKING CO	ROUTE 2	HARTFORD	AL 36344
MAGIC CITY TRANSPORTATION	1681 19TH PLACE SW	BIRMINGHAM	AL 35211
THOMAS BROTHERS TRUCKING	ROUTE 2, BOX 509	HAYNEVILLE	AL 36040

ALABAMA

Female Owned Carriers

BIRMINGHAM PARCEL DELY SERV	400 2ND COURT NORTH	BIRMINGHAM	AL 35204
BOYD BROTHERS TRANSPORTATION	RT. 1, BOX 40	CLAYTON	AL 36016
CONTINENTAL EXPRESSS INC	2911 MAIN STREET	MILLBROOK	AL 36054
FLOYD&BEASLEY TRANSFERCO INC	P. O. DRAWER 8	SYCAMORE	AL 35149
FREEDOM EXPRESS	P. O. BOX 851	SPANISH FORT	AL 36527
HUEY TRANSP CO INC	2802 LOMB AVE	BIRMINGHAM	AL 35201
HUMPHREY SERVICES	206 WESTERN HILLS	MADISON	AL 35758
M.D. WEEKS TRUCKING CO	US 278 EAST	HAMILTON	AL 35570
NEELY TRANSPORT INC	1500 2ND ST. W.	BIRMINGHAM	AL 35214
SHAW WAREHOUSE CO	P. O. BOX 10927	BIRMINGHAM	AL 35202
SPECIALTY COURIERS, INC	7100 IVYWOOD DR	MOBILE	AL 36619

ALASKA

Minority Owned Carriers

BELARDI & SCHNEIDER, INC	5245 GLACIER HWY	JUNEAU	AK 99801
GRAVES TRUCKING	6121 OLD SEWARD HWY	ANCHORAGE	AK 99502
PACIFIC WESTERN LINES	660 OCEAN DOCK RD	ANCHORAGE	AK 99501
UNITED TRANSPORTATION INC	P.O. BOX 285	BETHEL	AK 99559

ALASKA

Female Owned Carriers

CHUCK-A-LUCK CO	3717 LOCARNO DR	ANCHORAGE	AK 99504
FOUR STAR TERMINALS INC	P.O. BOX 6589	ANCHORAGE	AK 99502
HUSKY TRANSPORTATION	8527 EMERALD	ANCHORAGE	AK 99502
SIG WORLD STORAGE & TRANSFER	P.O. BOX 791	FAIRBANKS	AK 99707

ARIZONA

Minority Owned Carriers

FRANK'S TRANSFER INC.	126 W. FORREST GROVE	PHOENIX	AZ 85041
SUNDANCE DELIVERY, INC	2400 W 10TH PL	TEMPE	AZ 85281
SUNRUNNER TRANSPORTATION	2943 EAST WEILDING RD	TUCSON	AZ 85706
TANZER & TANZER TRUCKING, INC.	P.O. BOX 306	LAKE HAVASU CTY	AZ 86403
VALDEZ TRANSFER INC	422 SOUTH 33RD ST	PHOENIX	AZ 85009

ARIZONA

Female Owned Carriers

C.R. SMITH TRUCKING	900 WILLOW LANE	TAYLOR	AZ 85939
DAZE TRANSFER	1004 W 4TH ST	WINSLOW	AZ 86047
DONAHUE TRKG. CO.INC	5633 W. HIGHLAND AVE	PHOENIX	AZ 85031
E J DICKIEE TRUCKING CO	P.O. BOX 888	BAGDAD	AZ 86321
KENT FROST CANYONLAND TOURS	PO BOX 460	FLAGSTAFF	AZ 86002
KUNKLE TRANSFER & STG	420 S 3RD AVE	PHOENIX	AZ 85003
OZELLA HARRINGTON TRUCKING	P.O. BOX 604	BENSON	AZ 85602
SATELLITE EXPRESS	6819 N 21ST AVE, #F	PHOENIX	AZ 85015
TUCSON WHSE & TRANSF CO	110 E 6TH ST	TUCSON	AZ 85705
VAL TRUCKING, INC	3226 W. DURANGO	PHOENIX	AZ 85009

ARKANSAS

Minority Owned Carriers

MONTGOMERY TRUCKING	1006 VIRGINIA	EL DORADO	AR 71730

ARKANSAS

Female Owned Carriers

A. & C. TRUCKING	ARK. HIGHWAY 385	GRIFFITHVILLE	AR 72060
ARKANSAS TRANSPORT CO INC	P. O. BOX 702	LITTLE ROCK	AR 72203
AVERY PRUITT & SON	ROUTE 1, BOX 1 A	JASPER	AR 72641
CHARLESTON TRANSFER	P. O. BOX 36	CHARLESTON	AR 72933
KRUGGER TRAVEL	109 E 7TH ST	LITTLE ROCK	AR 72201
LEWALLEN TRANS SERV INC	1002 S. THOMPSON	SPRINGDALE	AR 72764
SILICA TRANSPORT INC	P. O. BOX 232	GUION	AR 72540

CALIFORNIA

Minority Owned Carriers

A.B. TRANSFER INC	17031 GREEN DR	INDUSTRY	CA 91745
A.M. & S. TRANSPORTATION CO.	3009 FILBERT ST	OAKLAND	CA 94608
ACE TRAVELS	165 OFARRELL,#214	SAN FRANCISCO	CA 94102
AMERICAN TOUR & LEASING	5230 CLARK	LAKEWOOD	CA 90712
APPLE'S TRANSPORT SERVICE	11703 GARD AVE	NORWALK	CA 90650
ARTHUR BUIE TRUCKING	P. O. BOX 2150	SPRING VALLEY	CA 92077
AUTO TRANSPORTES	1102 E. FRANCIS ST.	CORONA	CA 91720
B. GARCIA TRUCKING	16234 MALLORY DR	FONTANA	CA 92335
BAYVIEW TRUCKING INC	7080 FLORIN PERKINS	SACRAMENTO	CA 95828
BEN MGRDICHIAN	15527 WILMAELIN DR	WHITTIER	CA 90604
BOBBY JOHNSON TRUCKING	2747 RIALTO AVE	RIALTO	CA 92376
BREAK BULK SERVICE	2395 WOOD ST	OAKLAND	CA 94607
C & T TRUCKING INC	1050 BROOKSIDE DRIVE	RICHMOND	CA 94808
C.M.H. WAREHOUSE CORP.	4630 BORDER VILLAGE	SAN YSIDRO	CA 92073
CALEXICO FREIGHT LINES	465 W. 2ND ST.	CALEXICO	CA 92231
CALIFORNIA SUN LINES	19202 MOORSHIRE PL	CERRITOS	CA 90701
CALIFORNIA TERMINAL CO INC	3240 E BANDINI BLVD	LOS ANGELES	CA 90023
CEL, INC-ADVANCED TOURS	1379 E. COLORADO	GLENDALE	CA 91205
CENTAUR CORPORATION	BOX 433	BONSAU	CA 92003
CENTENNIAL TRANSPORT	24850 S. WILMINGTON	CARSON	CA 90745
CHARLES C. DANACHE	530 E. WARDLOW ROAD	LONG BEACH	CA 90807
DE LA TORRE LEASING	141 WEST AVE 34	LOS ANGELES	CA 90031
DON SIEWERT TRUCKING	16420 VASQUEZ CANYON	CANYON COUNTRY	CA 91351
EARL LARRY'S TRUCKING	1447 W. 127TH ST.	LOS ANGELES	CA 90047

CALIFORNIA

Minority Owned Carriers

ED WONG TRUCKING CO	717 E 22ND STREET	LOS ANGELES	CA 90011
EL BANDIDIO TRUCKING	6622 MANCHESTER	BUENA PARK	CA 90620
ENDO FREIGHT FORWARDERS, INC.	428 W. REDONDO BEACH	GARDENA	CA 90248
ERNIE CONNOR'S MOVING & STRG	1570 CUSTER AVE	SAN FRANCISCO	CA 94124
FRANK A GUERERO LUMBER HNDLNG	2224 IROQUOIS AVE	LONG BEACH	CA 90315
FRANK AVILA JR. TRUCKING CO.	23072 AVENUE 216	LINDSAY	CA 93247
FREIGHT TRAIN TRUCKING	4906 E COMPTON BLVD	COMPTON	CA 90221
GEORGE HALL TRUCKING CO	8260 BERRY AVE	SACRAMENTO	CA 95828
GIBBS AND GIBBS INC	824 HURON DRIVE	CLAREMONT	CA 91711
GREENLEAF TRANSPORTATION	4739 DUFREE AVE.	PICO RIVERA	CA 92621
HAKANO EXPRESS SERVICE	18924 S. LAUREL PARK	COMPTON	CA 90220
HAPPY TOURS	875 RIDGE COURT	S.SAN FRANCISCO	CA 94080
HELENAS FOOD PRODUCTS	P. O. BOX 2112	LOS BANOS	CA 93635
HOWLETTS TRUCKING CO	332 N. CANAL ST.	SAN FRANCISCO	CA 94080
INFLATION FIGHTERS	5601 W. SLAUSON AVE	LOS ANGELES	CA 90230
INTERNATIONAL LIQUID TRANS.	18281 COLVILLE ST	FOUNTAIN VALLEY	CA 92708
J.C. TRUCKING CO.	1207 S. AURORA ST	STOCKTON	CA 95206
JESS DIAZ TRUCKING	13625 EXCELSIOR DR	SANTA FE SPRGS	CA 90670
JOYCE STRAIT MITCHELL TRUCKING	2040 RANCHO DRIVE	RIVERSIDE	CA 92507
K C G M TRANSPORT	2333 CASPIAN AVENUE	LONG BEACH	CA 90810
KEN-WAY TRUCKING, INC.	110 BRANNAN STREET	SAN FRANCISCO	CA 94107
L & S TRANSPORT	1600 E TRUXTON	BAKERSFIELD	CA 93385
LA MARK TRANSPORT INC.	437 SANTA BARBARA	DALY CITY	CA 94014
LA SALLE TRUCKING COMPANY	690 ANITA ST.	CHULA VISTA	CA 92011

CALIFORNIA

Minority Owned Carriers

LEE & LEE	440 FIRST STREET	WOODLAND	CA 95695
LOH INTERNATIONAL MOVERS INC.	114 ADELINE STREET	OAKLAND	CA 94607
LUCERO FILM SERVICE	3630 LOCKE AVENUE	LOS ANGELES	CA 90032
M.A.C. ENTERPRISES	1036 W.MARTIN LUTHER	LOS ANGELES	CA 90037
MAMMOTH FREIGHT LINES	6725 N MOTEL	FRESNO	CA 93711
MARCUS TRUCKING CO	1017 N. FOOTE AVE	WILMINGTON	CA 90744
MLIDANZAS TYMSA MOVING	3522 UNION PACIFIC	LOS ANGELES	CA 90023
MUNDI TOURS	11520 MENLO, #Z	HAWTHORNE	CA 90250
NISEI CHARTER SERVICE	2428 W. BEVERLY BLVD	MONTEBELLO	CA 90640
P & K TRUCKING, INC.	3049 SACRAMENTO ST.	SAN FRANCISCO	CA 94115
PAR TRUCKING INC	1008 E. MORUEN ST	LANCASTER	CA 93535
PARISH CHARTER LINES	148 HEDGE ROAD	MENLO PARK	CA 94025
PASCUZZO & HONEYMAN TRKING CO.	5127 S. MAYWOOD AVE	MAYWOOD	CA 90270
R & E TRUCKING	P. O. BOX 2214	FULLERTON	CA 92633
R. JOHNSON REFRIGERATED	P.O. BOX 4232	STOCKTON	CA 95204
RAM TRUCKING INC	P.O. BOX 1109	DAVIS	CA 95617
REBEL VAN LINES	2150 S. ALAMEDA ST.	COMPTON	CA 90221
RELIABLE DRIVE AWAY CO	125 GIVEN PLACE	MONTEBELLO	CA 90640
RELIABLE EXPRESS, INC	15600 SALT LAKE AVE	INDUSTRY	CA 91744
RIVAS TRUCKING	16714 CHERRY AVE	TORRANCE	CA 90504
ROAD RUNNER STAGE	P O BOX 2863	GARDENA	CA 90247
ROBERT DORRIGAN, INC	3739 HILLSBOROUGH DR	CONCORD	CA 94520
ROBERT H. GARCIA	1051 ECHO AVE	OXNARD	CA 93030
ROBINSON CHARTER LINES	1118 INGERSON AVE	SAN FRANCISCO	CA 94124

CALIFORNIA

Minority Owned Carriers

S & J TRUCKING & LEASING	2054 E.VERNON AVE	VERNON	CA 90058
SAM CRAIG TRANSPORT	1462 WEST 54TH ST	LOS ANGELES	CA 90062
SENIOR TRANSPORTATION	3011 SAN LUIS	RICHMOND	CA 94804
SERVICE TRANSPORT LINES INC	P.O. BOX 1232	W SACRAMENTO	CA 95691
SHIMA TRANSFER CO	74 MISSION ROCK STR	SAN FRANCISCO	CA 94107
STANIRAN, INC.	2000 SANTA CRUZ AVE.	ANAHEIM	CA 92805
STINSON TRUCKING	351 S P. VICTORIA DR	MILPITAS	CA 95035
STRICKLANDS UNLIMITED SERVICE	3072 22ND AVE.	OAKLAND	CA 94602
TAMAKI INT'L, INC	1330 W. WALNUT PKWY	COMPTON	CA 90220
THE CON AFFAIR, LTD	924 EAST MOONEY DR	MONTEREY PARK	CA 91754
THOMPSON & THOMPSON TRUCKING	POST OFFICE BOX 403	PINOLE	CA 94564
TRANS ARROW INC	306 AHERN STREET	SACRAMENTO	CA 95814
TRAYLOR TRUCKING INC.	8018 COACH DRIVE	OAKLAND	CA 94605
TRINITY CHARTER LINES	525 W. 121ST ST	LOS ANGELES	CA 90044
TRIUMPH CHARTERS INC	18488 PROSPECT RD	SARATOGA	CA 95070
VARIETY TOURS, INC	3840 CRENSHAW BLVD	LOS ANGELES	CA 90008
VIA EXPRESS INC	P.O. BOX 3670	SAN FRANCISCO	CA 94119
WESTERN LIQUID TRANSPORT	2120 HARBOR ST	PITTSBURG	CA 94565
WESTERN MOTOR TRANSPORT	P. O. BOX 3411	SAN FRANCISCO	CA 94119
YAMKO TRUCK LINES	P. O. BOX 716	MONTEBELLO	CA 90640

CALIFORNIA

Female Owned Carriers

AAA CHARTER LINES	5136 W. 106 ST	LENNOX	CA 90304
AIR CARGO DELIVERY SERVICE	550-C E. TRIMBLE RD.	SAN JOSE	CA 95131
ALL-ROADS MOVING & STG	1400 E. WALNUT AVE	FULLERTON	CA 92630
AMERICAN SIGHTSEEING	1902 NATIONAL AVE	SAN DIEGO	CA 92113
BEES VAN AND STORAGE INC	2255 S OAKLEY ST	SANTA MARIA	CA 93454
BISHER FREIGHT SERVICE	101 8TH ST	RAMONA	CA 92065
C & E TRANSPORTATION	9371 ROAD 234	TERRA BELLA	CA 93270
C W BUNDREN INC	405 S. HEWITT ST.	LOS ANGELES	CA 90013
CALIF. INTERSTATE TRANSPORT	5729 SMITHWAY	COMMERCE	CA 90040
CATON VAN & STG	21401 CURTIS AVE	HAYWARD	CA 94545
COASTWAY EXPRESS INC	6088 FEDERAL BLVD	SAN DIEGO	CA 92114
COMBINED TRANSPORT	905 MATEO ST	LOS ANGELES	CA 90021
CONSIGNMENTS UNLIMITED	5719 SO. CEDAR AVE	FRESNO	CA 93725
D & B TRUCKING	1804 ROSE AVE	CERES	CA 95307
DALES ARABIAN HORSE TRNSP	RT. 1, BOX 197A	COTTONWOOD	CA 96022
DEBOER TRUCK LINES INC	P.O. BOX 635	RIPON	CA 95366
DESERT STAGE LINES	73555 29 PALMS HWY	29 PALMS	CA 92277
DRYWALL TRANSPORT CO	3361 MONIER CIRCLE	RANCHO CORDOVA	CA 95670
ECONOMY MOVERS	2016 E TYLER ST	FRESNO	CA 93727
ELECTRONICS VAN	1554 TRIMBLE ROAD	SAN JOSE	CA 95131
EQUIPMENT TRANSPORTATION	240 S. GLENN DR	CAMARILLO	CA 93011
FAR-WEST CO	P. O. BOX 9091	STOCKTON	CA 95208
FISK TRUCKING & TRSF CO	716 SAN FERNANDO RD	LOS ANGELES	CA 90065

CALIFORNIA

Female Owned Carriers

FOUR BROTHERS TRANSP CO	3359 ARMY STREET	SAN FRANCISCO	CA 94110
FREDERICKSON TANK LINES INC	P.O. BOX 717	WEST SACREMENTO	CA 95691
GLENDALE TRANSFER & STG CO INC	1601 GARDENA AVE	GLENDALE	CA 91204
H & M TRANSPORT INC	707 ROTH RD	FRENCH CAMP	CA 95231
I-GO VAN & STORAGE INC.	3747 GILMORE AVENUE	BAKERSFIELD	CA 93308
INTERNATIONAL MOVERS INC	3653 COSTABELLA	LEMON GROVE	CA 92045
J C TRANSFER CO	302-B N RUSSELL ST	SANTA MARIA	CA 93454
JAMES TRANS & STORAGE	390 N 2ND ST	SAN JOSE	CA 95112
K.G. TRANSPORTATION	18587 E. COLIMA	ROWLAND HTS	CA 91748
KOZY MOVING & STG	101 BENICIA ROAD	VALLEJO	CA 94590
LIN LINES INC	700 E. TAHQUITZ, #A	PALM SPRINGS	CA 92262
LYONS ROARING EXPRESS INC	2905 MEAD AVE	SANTA CLARA	CA 95050
MEXICOACH	1050 KETTNER BLVD	SAN DIEGO	CA 92101
MINGLE TRANSPORTATION & WHSE	2443 STANISLAUS	FRESNO	CA 93721
P & S TRANSFER	P. O. BOX 8198	VAN NUYS	CA 91409
PACE LINES	100 CALIF. ST, #1060	SAN FRANCISCO	CA 94111
PEETERS TRANSP CO INC	3600 THIRD ST	SAN FRANCISCO	CA 94124
PIEDMONT & TRANSFER	P. O. BOX C	SANTA CLARA	CA 95055
R.T.I., INC	2170 E 48TH ST	LOS ANGELES	CA 90058
RAIL DELIVERY SERVICES	3620 LONG BEACH	LONG BEACH	CA 90807
RAY COBB TRANSP CO	130 RAILROAD AVE	MONVROVIA	CA 91016
RICCI BROS TRUCKING	600 STAGE GULCH RD	PETALUMA	CA 94952
ROBERTS HOLIDAY LINES	930 POINSETTIA	SANTA ANA	CA 92701
ROYAL COACH TOURS	644 STOCKTON AVE.	SAN JOSE	CA 95126

CALIFORNIA

Female Owned Carriers

ROZELLE A. ANDERSON	P.O. BOX 5669	SAN BERNARDINO	CA 92412
SIERRA CORRUGATED	267 SHARP CIRCLE #4	ROSEVILLE	CA 95678
SINES TRUCKING CO	6565 SMITH ST.	NEWARK	CA 94560
T W H INC	221 S. HAYES ST.	TEHACHAPI	CA 93561
TESKEY TRANSPORTATION	501 S. STIMSON AVE	CTY OF INDUSTRY	CA 91745
THOMPSON MOVING & STORAGE	300 COMMERCE AVE	ATWATER	CA [illegible]301
TRANSPORT SPECIALTIES	2859 SO. ORANGE	FRESNO	CA 93725
U.S. SERVICES, INC	7531 MCFADDEN AVE	HUNTINGTON BCH	CA 92647
VANDENBERG VAN & STG INC	151 VULCAN DRIVE	LOMPOC	CA 93436
VIDA LINES, INC	1901 ARROYO SECO DR	SAN JOSE	CA 95125
WADE TRANSPORTATION CO	P.O. BOX 2216 TERMINAL	LOS ANGELES	CA 90058
WEST COAST WAREHOUSE CORP	P.O. BOX 258	LONG BEACH	CA 90801
WEST VALLEY CHARTER	240 CRISTICH LANE	CAMPBELL	CA 95008

COLORADO

Minority Owned Carriers

AUTOMOBILE TRANSPORT SPECIALST	1400 W. 52ND AVE.	DENVER	CO 80221
BOWERS TRANSFER	3850 E. 48TH AVE	DENVER	CO 80216
MONTOYA TRANSPORT CO	3028 S. EATON ST	DENVER	CO 80227
P & L TRUCKING SERVICE INC	3592 IVY STREET	DENVER	CO 80207

COLORADO

Female Owned Carriers

ANGELYNES INC	P. O. BOX 563	LOVELAND	CO 80539
CODE, INC	4600 COLORADO BLVD	DENVER	CO 80216
CALLUM TRUCKING	1000 W. 10[illegible]TH PLACE	NORTHGLENN	CO 80221
DYS ENTERPRISES, INC	3107 FIREWEED DR	COLORADO SPRGS	CO 80907
FRONT RANGE AIRPORT LIMO	4540 E COUNTY RD 66	WELLINGTON	CO 80549
MERIT TRUCKING	2862 HWY 6 & 50	GRAND JCT	CO 81501
PAR DELIVERY SERVICE INC	4250 S SANTA FE DR	ENGLEWOOD	CO 80110
R & J TRANSP CO INC	1320 S [illegible] CT	LAKEWOOD	CO 80226
WESTERN CARRIER EXPRESS INC	2600 BRIGHTON BLVD	DENVER	CO 80216

CONNECTICUT

Minority Owned Carriers

JACKSON FREIGHT LINES	29 NORMAN DR	BLOOMFIELD	CT 06002
WATSONS MOVERS & STORAGE INC	ROUTE 32	SOUTH WINDHAM	CT 06256

CONNECTICUT

Female Owned Carriers

AMODIO MOVING INC	600 EAST STREET	NEW BRITAIN	CT 06051
ANGELA R. PUGLIESE	59 DOROTHY DRIVE	MIDDLEBURY	CT 06762
BUCKLEY LIMOUSINE	40 CUMBERLAND ST	HARTFORD	CT 06106
CARLSON'S EXPRESS, INC.	95 HILLIARD STREET	MANCHESTER	CT 06040
CORCORANS TRANSPORTATION INC	45 BROWN PLACE	WATERBURY	CT 06702
CROWN LIMOUSINE	62 ROOSEVELT DR	TRUMBULL	CT 06611
D. MILLER TRUCK SERV	1 RAINY HILL RD	ROXBURY	CT 06783
DAY TRIPPERS	P.O. BOX 1062	FAIRFIELD	CT 06430
E J KELLEY CO	30 RR SQUARE	TORRINGTON	CT 06790
EAST COAST TRUCKING INC	90 RENTELL RD	HAMDEN	CT 06514
FAIRFIELD COUNTY S&W BUS	71 EAST AVE	NORWALK	CT 06851
INDUSTRIAL TRANSPORT	1445 SOUTH MAIN	WATERBURY	CT 06706
KELLY TRANSIT CO INC	30 R R SQUARE	TORRINGTON	CT 06790
LOMBARDI EXPRESS	34 GOODWIN PARK RD	WETHERSFIELD	CT 06109
LYMAN BULK TRANSPORT	600 MAIN ST	OAKVILLE	CT 06779
PAUL J BOCCAFRI CO	181 PANE ROAD	NEWINGTON	CT 06111
RICKYS ADVENTURES INC	6 GREGG COURT	WALLINGFORD	CT 06492
STRATFORD BUS LINE INC	70 CHESTNUT AVE	STRATFORD	CT 06497
THE ARROW LINE, INC.	P.O. BOX 8307	EAST HARTFORD	CT 06108
VAN DYKE TRAVEL	60 TEMPLE ST	NEW HAVEN	CT 06510
WEST HAVEN TRUCKING CO INC	435 CONGRESS AVE	NEW HAVEN	CT 06519
WHALENS MOVING & STG	BOX 264, SHEPHARD RD	NORFOLK	CT 06058

DELAWARE

Minority Owned Carriers

ALADDIN BUS LINES	1605 N.CLAYMONT	WILMINGTON	DE 19802

DELAWARE

Female Owned Carriers

ARLINGTON J. WILLIAMS, INC.	1398 SO. DUPONT HWY.	SMYRNA	DE 19720
NATIONAL SEAFOOD DISTR.	215 HIGH STREET	SEAFORD	DE 19973
RAINBOW CHARTER	504 CABOT DR	HOCKESSIN	DE 19707
THE TROLLEY CO	1721 DELAWARE AVE	WILMINGTON	DE 19806
WILSON BEV. CO	NEW WHARF RD	MILFORD	DE 19963

DISTRICT OF COLUMBIA

Minority Owned Carriers

A-AAAVAIL & MCNEILL BROS	1207 4TH ST. N.E.	WASHINGTON	DC 20002
CLARENCE COVERDALE	233 FLORIDA AVE, NW	WASHINGTON	DC 20001
HENDERSON BUS SERVICE	3735 JAY ST. N.E.	WASHINGTON	DC 20019
HOLY TEMPLE CHURCH	439 12TH ST, SE	WASHINGTON	DC 20003
JAPAN TRAVELERS SERVICE	1100 17TH ST, N.W.	WASHINGTON	DC 20036
KELLY BUS SERVICE INC	1127 45TH PLACE S.E.	WASHINGTON	DC 20019
XYZ TRANSPORT	927 15TH ST. NW	WASHINGTON	DC 20005

FLORIDA

Minority Owned Carriers

ATLANTIC GULF	1325 N.W. 32 AVE.	MIAMI	FL 33125
FARO TRANSPORT, INC	6767 NW 74 AVE	MIAMI	FL 33166
FREIGHT HAULERS INTL	7335 NW 79 TERRACE	MIAMI	FL 33166
HAYWARD TRUCKING	6549 ROBINSON ROAD	JACKSONVILLE	FL 32205
IMPERIAL FREIGHT BROKERS	7005 N.W. 41ST ST	MIAMI	FL 33166
INLAND TRUCKING	3811 N. 38TH	TAMPA	FL 33610
J. GOULD TRUCK LINE	3007 WEST EDGEWOOD	JACKSONVILLE	FL 32209
JOE A. EVANS EXPRESS	4623 EBONY STREET	ORLANDO	FL 32805
KING CARTAGE CORPORATION	732 N.E. 2ND AVE	MIAMI	FL 33132
LOGISTICAL TRANSPORTATION	P. O. BOX 40001	JACKSONVILLE	FL 32203
N.T.I. EXPRESS	1750 W. 39TH PLACE	HIALEAH	FL 33012
NEWPORT TRUCKING INC	P.O. BOX 522323	MIAMI	FL 33152
OMELIO ARMAS	760 N.W. 202ND ST	MIAMI	FL 33169
T A T AIRFREIGHT INC	4401 NW 7TH AVENUE	MIAMI	FL 33152
TRANSCONEX, INC.	3000 NW 74TH AVE	MIAMI	FL 33152
TRINITY TRANSPORT	701 N.FEDERAL HWY	DANIA	FL 33004
VAKELA TRANSPORT, INC	11971 S.W. 200 ST	MIAMI	FL 33177

FLORIDA

Female Owned Carriers

A - B BUS SERVICE, INC	4928-1/2 24TH ST. N.	ST. PETERSBURG	FL 33714
DAWNS WAY INC	P.O. BOX 3465	LONGWOOD	FL 32750
FAF INC	5824 LONE PINE RD	JACKSONVILLE	FL 32216
GOLDEN ISLES COACHES	1017 N. MCCDUFF AVE	JACKSONVILLE	FL 32205
GREENSTEIN TRUCKING CO	280 NW 12 AVE BX 60	POMPANO BEACH	FL 33061
HAYWARD TRUCKING	6549 ROBINSON RD.	JACKSONVILLE	FL 32205
IMPERIAL TRANSPORTATION	5512 CRAIG DR	LAKELAND	FL 33805
JOINER VAN&STORAGE SERV INC	661 N LAKEWOOD DR	ORLANDO	FL 32803
LAUDERDALE AIRPORT	304 SW 12TH ST	FT.LAUDERDALE	FL 33315
M.E.R. TRUCKING	2241 BONITA AVE	VERO BEACH	FL 32961
MISSIE, INC	1403 S. WEST 8TH ST	POMPANO BEACH	FL 33060
N.A.T.CO. INC	P. O. BOX 2176	FT. PIERCE	FL 33454
RIDGE TRAVEL AGENCY INC	151 E CENTER ST	SEBRING	FL 33870
SILCO PETROLEUM	8467 NOROAD	JACKSONVILLE	FL 32210
ZANNI TRANSFER& STG CO	820 SOLIMAN	FORT PIERCE	FL 33450

GEORGIA

Minority Owned Carriers

BIG T TRUCK SERVICE, INC.	3319 SAXONY WAY	LITHONIA	GA 30340
COBB COACH LINES	3495 CUMBERLAND CLUB	ATLANTA	GA 30339
COASTAL TOURS	66608 WHITE BLUFF RD	SAVANNAH	GA 31405
DOTSON TRUCKING CO INC	1220 MURPHY AVE SW	ATLANTA	GA 30310
THOMAS MOBILE HOME	955 FARR ROAD	COLUMBUS	GA 31907

GEORGIA

Female Owned Carriers

A-1 VETERANS TRAILER CO.	P.O. BOX 5839 EXP. 7	ATHENS	GA 30604
BESTWAY TRUCKING, INC.	P.O. BOX 365	CONLEY	GA 30027
BLITZ TAXI	48 CANDLER RD. SE	ATLANTA	GA 30317
BRYANT & CORBETT TRAVEL AGENCY	1ST NAT. BANK BLDG	ROME	GA 30161
CENTURY III, INC	3457 GREYSTONE CT	MARIETTA	GA 30067
CONTRACT TRANSPORT	P. O. BOX 25655	ATLANTA	GA 30308
EVEREADY DRAYAGE SER. INC	118 GRAVEL RD	PORT WENTWORTH	GA 31407
FBM TRUCKING INC	930 HWY 54 E [illegible]	FAYETTEVILLE	GA 30214
GEO HENSLEY MOTOR EXPRESS INC	P.O. BOX 569	McDONOUGH	GA 30253
GRIBBLE BROS RENTAL SERV INC	4953 ATLANTA RD SE	SMYRNA	GA 30080
HAR BET INC	7209 TARA BLVD	JONESBORO	GA 30237
HOME TRANSP CO INC	1425 FRANKLIN RD SE	MARIETTA	GA 30065
HOWARD-STERLING, INC	695 HONEYSUCKLE LANE	GAINESVILLE	GA 30501
J & S TRANSPORTATION INC	1015 NORTH ST	CONYERS	GA 30207
LEON AYCOCK OIL CO	P.O. BOX 7077	SAVANNAH	GA 31418
NOWELL TRUCKING CO	1106 THOMWALL ST	VALDOSTA	GA 31601
PERRY BUS LINE	1403 CAMBRIDGE ROAD	PERRY	GA 31069
PHIL-MART TRANSPORT INC	P.O. BOX 126	BRASELTON	GA 30517
R.W.C. TRANSPORTATION	4682 WESTBURN LANE	STONE MOUNTAIN	GA 30083
SESO SECURITY STORAGE	114 HARDY CT	AUGUSTA	GA 30901
SUNDANCE EXPRESS	P.O. BOX 157	MABLETON	GA 30059
TUMLIN TRUCKING & WAREHOUSE	SWISHER DR.	CARTERSVILLE	GA 30120

HAWAII

Minority Owned Carriers

ISLAND MARINE, INC.   414 KAWILI STREET   HONOLULU   HI 96817

HAWAII

Female Owned Carriers

A & P SHIPPING CORP   911 PUUHALE ST.   HONOLULU OAHU   HI 96819

IDAHO

Minority Owned Carriers

B TRANSFER	390 AIRBASE ROAD	MOUNTAIN HOME	ID 83647
D & A TRUCKING CO INC	ROUTE 2, BOX 2161	NAMPA	ID 83651
S - K TRUCKING	P.O. BOX 350	COUNCIL	ID 83612
STATEWIDE TRANSPORT	7103 POLK DR	BOISE	ID 83704
WILLIS TRUCKING	P. O. BOX 5584	BOISE	ID 83705

IDAHO

Female Owned Carriers

A & A TRUCKING	E. 2640 16TH ST	POST FALLS	ID 83854
COMPTON TRANSFER & STG	4302 INDUSTRIAL ST	BOISE	ID 83705
INTERMOUNTAIN DISPATCH	210 N. LATAH	BOISE	ID 83707
SALSKOV TRANSFER	214 E PARK	EMMETT	ID 83617

ILLINOIS

Minority Owned Carriers

A&G CHARTER BUS	3537 SOUTH WABASH	CHICAGO	IL 60653
B GARCIA TRUCKING CO	2760 N 45TH STREET	E. ST. LOUIS	IL 62201
DASH MESSENGER SERVICE	ROOSEVELT RD	CHICAGO	IL 60607
DUAL FREIGHT SYSTEMS	9730 S. WESTERN AVE	EVERGREEN PARK	IL 60642
DUJAC EXPRESS LTD	9415 SO. WESTERN AVE	CHICAGO	IL 60620
EZEKIEL MORRIS TRANSPORTATION	P.O. BOX 19670	CHICAGO	IL 60619
FREEWAY CONTRACT	6841 MILTON DR	ROCKFORD	IL 61109
FRIENDLY TRUCKING CO	P.O. BOX 09083	CHICAGO	IL 60609
JAMES THOMAS TRUCKING INC	17708 STONEBRIDGE	HAZEL CREST	IL 60429
KENNY'S TRUCKING	7800 S. CHICAGO AVE	CHICAGO	IL 60619
LONA TRUCKING CO	5013 SOUTH LAWLER	CHICAGO	IL 60638
M-T-Y TRANSPORTATION	8204 COTTAGE GROVE	CHICAGO	IL 60619
M.T. TRUCK LINE, INC	343 S. DEARBORN ST	CHICAGO	IL 60604
MC FADDEN TRUCKING	9959 SOUTH UNION	CHICAGO	IL 60628
R.M.E. INC	1800 N. SABBONA	STREATOR	IL 61364
REO MOVERS & VAN LINES	7000 SO. CHICAGO AVE	CHICAGO	IL 60637
SPRINT, INCORPORATED	3108 GILEAD AVE	ZION	IL 60099
SUPER CARRIER COMPANY	3250 SO PULASKI RD	CHICAGO	IL 60623
WALKER TRUCK LINE	5807 S. WABASH AVE	CHICAGO	IL 60637
WATTS TRANSFER COMPANY	825 1ST AVE.	ROCK ISLAND	IL 61201

ILLINOIS

Female Owned Carriers

AIM CARTAGE & LEASING INC	2515 W 25TH STREET	CHICAGO	IL 60608
ALLWAY TRANSPORT	1609 NORTH 56TH	WASHINGTON PARK	IL 62204
ALSWAY, INC	4635 N. BROADWAY	CHICAGO	IL 60640
ANDERSON BROS. M & S CO.	3141 NORTH SHEFFIELD	CHICAGO	IL 60657
APACHE TRUCK LEASING	R.R. 1	SPARTA	IL 62286
BIL-MAC EXPRESS	735 ORIOLE	PARK RIDGE	IL 60068
BOSCH TRUCKING COMPANY INC	5600 S. WASHINGTON	BARTONVILLE	IL 61607
BREWER CHARTER	R.R. #1	MAPLETON	IL 61547
C. SCHMIDT TRUCKING CO., INC.	101 W. SANGER ST.	SALEM	IL 62881
CARMAC TRANSPORT, INC	273 WALKER AVE	CLARENDON HILLS	IL 60514
CASSENS TRANSPORT CO	P.O. BOX 468	EDWARDSVILLE	IL 62025
CENTRAL PETROLEUM CO.	P.O. BOX 506	CENTRALIA	IL 62801
COLLINSVILLE DELIVERY	828 HENRY	COLLINSVILLE	IL 62234
CONSOLIDATED CARTAGE CO INC	P.O. BOX E	SUMMIT	IL 60501
COORDINATED FREIGHT SERVICE	2500 SHERIDAN AVE	GRANITE CITY	IL 62040
CORNELIUS TRUCKING	861 ST. BENEDICT	CAHOKIA	IL 62206
COUNTRY WIDE TRUCKING	18520 KISHWAUKEE	WOODSTOCK	IL 60098
D.A. EXPRESS, INC.	11937 SO. PAGE AVE.	CALUMET	IL 60643
DIXON RAPID TRANSFERINC	RT 64 EAST	MT MORRIS	IL 61054
DON FICKER	332 E FIRST S	CARLINVILLE	IL 62626
EAST WEST EXPRESS	231 S. FRONTAGE RD,	BURR RIDGE	IL 60521
EVANS CARTAGE	9001 S COUNTY LINE	HINSDALE	IL 60521
FISCHER COURIERS	2009 PEORIA RD	SPRINGFIELD	IL 62702
GENO GUSTI CO INC	2407 GREENVIEW DR	NORTHBROOK	IL 60062

ILLINOIS

Female Owned Carriers

HACKEL CARTAGE	2155 W 80TH ST	CHICAGO	IL 60620
HATCHER TRUCKING	P. O. BOX 59	ALSEY	IL 62610
HEPP TRUCK SERVICE	RR 2	NEW ATHENS	IL 62264
HOLLEWELL TRUCKING CO. INC.	510 S 10TH STREET	OREGON	IL 61061
HUBBARD CARTAGE CO	11861 S. COTTAGE	CHICAGO	IL 60628
ILLIANA MOTOR SERVICE	4431 S. HALSTED ST.	CHICAGO	IL 60609
ILLINOIS AUTO DELIVERY	694 ILL. BLVD.	HOFFMAN ESTATES	IL 60194
J D SCHAFFER CARTAGE CO	481 W MONROE ST	ELMHURST	IL 60126
JOLIET DELIVERY SERV INC	1300 N. BROADWAY ST.	JOLIET	IL 60434
JUMBO CARTAGE	6515 N. CICERO AVE.	LINCOLNWOOD	IL 60646
KIRKPATRICK TRUCKING CO	11317 ROUTE 14 NO	HARVARD	IL 60033
LONGFELLOW CARTAGE INC	1017 W. 48TH ST.	CHICAGO	IL 60609
LORSBACH TRUCKING INC	204 WATER ST.	HARDIN	IL 62047
M&S TRANSPORT INC	3738 S CICERO AVE	CICERO	IL 60650
MAGNUM MOTOR EXPRESS	226 N WEST AVE, #203	ELMHURST	IL 60126
MILAM & SPROULE TRUCKING INC	1001 N VERMILLION ST	STREATOR	IL 61364
MLB MARKETING SERVICE	21606 W. RAILROAD	MARENGO	IL 60152
PACE SETTER TRUCK & AIR	231 KENILWORTH	BOLINGBROOK	IL 60439
PNJ KORNACKER INC	3030 W 10TH ST	WAUKEGAN	IL 60085
QUINCY STORAGE & TRANSFER	200 JERSEY ST	QUINCY	IL 62301
R. MCMILLIN TRUCK SERVICE	R.R. 2 BOX 65	LEBANON	IL 62254
RAYBURN INC	400 W MAIN ST	WILMINGTON	IL 60481
RICHARD MCCURRIE TEAMING	1443 W. 41ST ST	CHICAGO	IL 60609
ROLLON TRANSPORTATION	P. O. BOX 913	SKOKIE	IL 60077

ILLINOIS

Female Owned Carriers

HOTRANS CO INC	6516 W 74TH ST	BEDFORD PARK	IL 60638
RUDOLF EXPRESS CO.	1650 ARMOUR RD.	BOURBONNAIS	IL 60914
SUNNY TRAVEL CENTER	309 FIRST AVENUE	ROCK FALLS	IL 61071
SUPER CARTAGE CO	3250 S. PULASKI RD	CHICAGO	IL 60623
TEMPO TRANSPORTATION	3017 S. KENSINGTON	WESTCHESTER	IL 60153
VEEN CARTAGE INC	9146 S KOLMAR AVE	OAK LAWN	IL 60453
WIMBERLY BUS SERVICE	131 S WALNUT	CENTRALIA	IL 62801
WOODDALE LEASING & TRKG CO INC	1925 ROSEHILL DR.	ARLINGTON HTS.	IL 60004

INDIANA

Minority Owned Carriers

CARTER INDUSTRIAL SER INC	2501 FAIR VIEW	ANDERSON	IN 46018
FALSON TRANSPORTATION INC	7547 SOUTHFIELD DR	INDIANAPOLIS	IN 46227
JOHNSON & HAMITER TRUCKING INC	4101 MASSACHUSETTS	INDIANAPOLIS	IN 46204
PAN-AM GENERAL TRANSPORT, INC.	P. O. BOX 68682	INDIANAPOLIS	IN 46268
ROSE CITY TRANSPORTATION INC	3721 NATIONAL 1 RD W	RICHMOND	IN 47374
STUARTS HOUSEHOLD FURN. M & S	701 N SENATE AVENUE	INDIANAPOLIS	IN 46202
WILLIAMS INDUSTRIAL TRANS	P. O. BOX 26062	INDIANAPOLIS	IN 46226

INDIANA

Female Owned Carriers

B&J CARTAGE CO., INC	3434 MCCARTY LANE	LAFAYETTE	IN 47905
BREMEN TRANSFER & STG	1403 WEST DEWEY ST	BREMEN	IN 46506
COMMANCHE EXPRESS LINES INC	PO BOX 451	JEFFERSONVILLE	IN 47130
CONSCHULL CONTINENTAL LINES	620 E. JEFFERSON ST	PLYMOUTH	IN 46563
COVENANT, INC	P.O. BOX 15704	FT. WAYNE	IN 46815
CUSTOMIZED TRANSPORTATION	2414 JACOBS DRIVE	NEW ALBANY	IN 49150
DELAWARE TRUCKING CO INC	P.O. BOX 689	MUNCIE	IN 47305
DON RAY DRIVEWAY CO INC	P.O. BOX 924	DECATUR	IN 46733
ELLIOTT TRUCK LINE INC	P.O. BOX 390	BOONVILLE	IN 47601
EVANSVILLE & OHIO VALLEY TRANSP	1420 N. STOCKWELL	EVANSVILLE	IN 47715
GO-FER EXPRESS	903 E LINCOLNWAY	LAPORTE	IN 46350
HIGHLAND FREIGHT LINES INC	9221 WILDWOOD DRIVE	HIGHLAND	IN 46322
HINER TRANSPORT INC	1317 S JEFFERSON ST	HUNTINGTON	IN 46750
INBULK TRANSPORT	5723 KENNEDY AVE	HAMMOND	IN 46323
IRMAR TRUCKING INC	3701 NATIONAL RD WES	RICHMOND	IN 47374
J & J CONTRACT CARRIERS, INC	60 SO STATE STREET	INDIANAPOLIS	IN 46201
KAINS MOTOR FRT SERVICE	BOX 270	LOGANSPORT	IN 46947
KAMMEIER TRUCKING CO INC	1402 BURGESS ST	FT WAYNE	IN 46808
L.I. GRIFFIN, INC.	P.O. BOX 6158	FT. WAYNE	IN 46896
MLB DELIVERY INC	1121 GOLFVIEW	CARMEL	IN 46032
NANCY BEAR TRUCKING	880 CONRAD AVE	JASPER	IN 47546
SHARON BROWN INC	RR#10 BOX 277	GREENSBURG	IN 47224
TRAVELBOUND INC	1111 E 54TH STREET	INDIANAPOLIS	IN 46220
TURNER TRANSPORTATION INC	P.O. BOX 92	MITCHELL	IN 47446
W D KIBLER TRUCKING CO	60 SO STATE AVENUE	INDIANAPOLIS	IN 46201

IOWA

Female Owned Carriers

A&J TRUCKING INC	824 CEDAR RAPIDS SW	CEDAR RAPIDS	IA 52402
B. LINE TRANSFER CO.	436 W 21ST	CARROLL	IA 51401
BROWN LINE, INC.	317 SOUTH 4TH STREET	WINTERSET	IA 50273
CEDAR MOUNTAIN EXPRESS	1732 E AVE. N.E.	CEDAR RAPIDS	IA 52402
CURLYS DELIVERY SERVICE INC	P.O. BOX 2207	CEDAR RAPIDS	IA 52406
D R BURGHER INC	205 5TH AVE NO	AUDUBON	IA 50025
DODEN TRUCKING CO., INC.	BOX 46	WODEN	IA 50484
H&W MOTOR EXPRESS CO	3000 ELM ST	DUBUQUE	IA 52001
JOHN SNYDER TRUCKING, INC	RR 2	WALKER	IA 52352
KINNEY TRUCK LINE INC	124 W WILLIS	PERRY	IA 50220
L & B TRUCKING CORP.	JOHNSON ST ROAD	KEOKUK	IA 52632
LITTLE GINNY TRANSPORT SYSTEMS	1112 29TH AVE. SW	CEDAR RAPIDS	IA 52408
MERCHANTS STORAGE AND TRANSFER	1214 E. 8TH ST. N.	NEWTON	IA 50208
NORMAN MICHELS	HWY 150 N	INDEPENDENCE	IA 50644
O'DONNELL LTD	1004 29TH ST	SIOUX CITY	IA 51104
R. L. GARRETT, INC	1709 KEMPER AVE	MUSCATINE	IA 52761
WORLEYS ASPHALT & PAVING CO	RR 1, HUNT RD	BURLINGTON	IA 52601

KANSAS

Minority Owned Carriers

A & A TOWING	1201 STATE	KANSAS CITY	KS 66102
A.J. COLLINS	ROUTE 1	HOLTON	KS 66436
GENE ABLES TRUCKING	1200 SILVER LAKE RD	TOPEKA	KS 66608
TRANSPORTATION INC.	P.O. BOX 320	OTTAWA	KS 66067

KANSAS

Female Owned Carriers

BUTLER BROTHERS, INC	2210 SIMPSON	WINFIELD	KS 67156
CAPITAL CITY MOVING & STG INC	FORBES INDUSTRIAL PK	TOPEKA	KS 66619
CASSELL TRUCK LINE INC	1515 N WASHINGTON	WICHITA	KS 67201
MARGIE L FERRIE	ROUTE 2 BOX 168	ARKANSAS CITY	KS 67005
RICHARDSON TRANSFER & STORAGE	246 N. 5TH ST	SALINA	KS 67401
SMART & SON INC	INTERSECTION HWY 24	GOODLAND	KS 67735
STOVER LINES INC	218 BRANNER	TOPEKA	KS 66603
TRANS STATE BUS INC	RR 1	LARNED	KS 67550
TRANSPORTATION INC	P.O. BOX 360	OTTAWA	KS 66067

KENTUCKY

Minority Owned Carriers

VALLEY TRANSPORTATION	P. O. BOX 72264	LOUISVILLE	KY 40272

KENTUCKY

Female Owned Carriers

A. BAILEY TRUCKING	RTE. 2, BOX 553	SHEPHERDSVILLE	KY 40165
FISHERS & ARNOLD INC	ROUTE 5 BOX 85	FALMOUTH	KY 41040
FRANKFORT & CINCINNATI RR CO.	P. O. BOX 475	FRANKFORT	KY 40602
HAZARD EXPRESS INC	P.O. BOX 746	HAZARD	KY 41701
HENRY EDWARDS TRUCKING CO	P.O. BOX 97, HWY 51	CLINTON	KY 42031
KENTUCKY SPECIALIZED HAULERS	RT. 3, BOX 156A	HARDINSBURG	KY 40143
MOVERITE TRANSFER& STG CO	1300 GREENUP AVE	ASHLAND	KY 41101
NEW TRUCKING INC	PO BOX 307	WHITLEY CITY	KY 42653
P & P TRANSPORT INC	4223 PINES RD	PADUCAH	KY 42001
SADDLE HORSE VANS INC	[illegible] DR.	LEXINGTON	KY 40503
SOMERSET TOURS	P. O. BOX 1031	SOMERSET	KY 42501
WEBB MOVING & STG	RT 9 BOX 535	LONDON	KY 40741
WORLD WIDE CHRISTIAN TOURS	114 W DIXIE HWY	ELIZABETHTOWN	KY 42701

LOUISIANA

Minority Owned Carriers

C. M. HENN & SONS, INC	10461 FRENCHTOWN RD	GREENWELL SPRGS	LA 70739
DAVIS TRUCKING SERVICE INC	RT 2 BOX 43	JEANERETTE	LA 70544
FARRIST TRUCK LINES	404 MOCKINGBIRD LANE	ST. ROSE	LA 70087
SEGURAS TRUCKING INCOTEMS	1003 CARMEL ST.	LAFAYETTE	LA 70508

LOUISIANA

Female Owned Carriers

A. SOUTHERN REG. VAN LINES	1550 AIRLINE HWY	METAIRIE	LA 70004
DAHLIA PLANTATION	ROUTE 2, BOX 18	TALLULAH	LA 71282
PAULETTES DELIVERY SERVICE	1055 JOSLIN ST.	SHREVEPORT	LA 71137
SALTER BUS LINES INC	212 HUDSON AVE	JONESBORO	LA 71251
SCOTT TRUCKING	11201 OLD SPANISH	NEW ORLEANS	LA 70128
SILVER STREAK SERVICE	RT 1 BOX 357	VINTON	LA 70668

MAINE

Female Owned Carriers

FLO JO CONTRACTING INC	P.O. BOX 283	BELGRADE LAKES	ME 04918
NOVEMBER TRANS.	RD2 BOX 1878	HAMPDEN	ME 04444
PEN-BAY TRANSPORT INC	65 TILLSON AVE	ROCKLAND	ME 04841

MARYLAND

Minority Owned Carriers

ACCO BUS SERVICE	17608 LIVINGSTON RD	ACCOKEEK	MD 20607
BROWNS BUS CO	5504 CHANDLER AVE	BALTIMORE	MD 21207
CHESAPEAKE MOTOR COACH	12 W. MONTGOMERY ST	BALTIMORE	MD 21230
CLINTON L JESSUP	5009 ROB LEE DRIVE	UPPER MARLBORO	MD 20870
DIXON BUS SERVICE	2510 WOODBERRY ST	HYATTSVILLE	MD 20782
FOOTNER AND COMPANY	210 E. REDWOOD ST	BALTIMORE	MD 21202
FT. WASHINGTON TRUCKING	5410 INDIANHEAD HWY	OXON HILL	MD 20745
GLADNEY TRANSPORTATION	2739 GREENMOUNT AVE	BALTIMORE	MD 21218
HALLS CHARTER SERVICE	7360 FURNACE BRANCH	GLEN BURNIE	MD 21061
LOGISTICS MOVERS, LTD	4826 STAMP ROAD	MARLOW HEIGHTS	MD 20748
PEACE DOVE CORP	200 69TH PLACE	CAPITOL HEIGHT	MD 20743
PLEASURE RIDE	16108 NINEAN CT	UPPER MARLBORO	MD 20772
PULLENS TRUCKING CO	3311 EAST FEDERAL ST	BALTIMORE	MD 21213
S & P BUS RENTAL INC	3911 DORCHESTER RD	BALTIMORE	MD 21207
SANN'S TRUCKING SERVICE	1572 ANNAPOLIS ROAD	ODENTON	MD 21113
SILVER STAR BUS CO	4404 "S" ST	CAPITOL HGTS	MD 20743
SUGGS TRANSPORTATION SERVICE	9015 WOODYARD RD	CLINTON	MD 20735
SUPREME BUS CO	2609 EVERGREEN RD	ODENTON	MD 21113
T & S BUS SERVICE	5009 WHEELER RD	OXON HILL	MD 20745
THORNES LUXURY COACH	4816 CLAYBURY AVE	BALTIMORE	MD 21206
TUCKER TOURS, INC	4306 VINE STREET	CAPITOL HTS	MD 20743
W.C. DAY TRUCKING	9028 TOWN & COUNTRY	ELLICOTT CITY	MD 21043
WILLIAM C THOMAS	ROUTE 1 BOX 260	TEAPPE	MD 21673
YOUNGS EXPRESS, INC.	1501 WARWICK AVENUE	BALTIMORE	MD 21216

MARYLAND

Female Owned Carriers

ANNAPOLIS COURIER	238 WEST ST	ANNAPOLIS	MD 21401
BALTIC CORP	14120 WOODWELL TER.	SILVER SPRING	MD 20906
BLASTING SUPPLIES	11008 PHILADELPHIA	WHITEMARSH	MD 21162
BURCHILL TRUCKING	12115 PULASKI HWY	BRADSHAW	MD 21021
CONTRACT CARTAGE CORP.	P.O. BO 486	JESSUP	MD 20794
FOXS VACATION SERVICE	5823 WESTERN RUN DR.	BALTIMORE	MD 21209
FREDERICK LIMOUSINE	P. O. BOX 98	BRADDOCK HTS	MD 21714
GILMER MOVING & STORAGE INC	RT. 40, BOX 536	ABERDEEN	MD 21001
HARNER'S EXPRESS	6541 EASTERN AVE	BALTIMORE	MD 21224
HOFMEISTER TOURS	9122 LENNING LANE	BALTIMORE	MD 21237
JAMES GIBBONS CO	P.O. BOX 253	ANNAPOLIS JCT	MD 20701
KELTON LTD-ACTION TRAVEL	CHARLES PROF. BLDG	WALDORF	MD 20601
PRESTIGE MESSENGER	3808 CEADARBROOKE	BALTIMORE	MD 21236
THE BALTIMORE MOTOR COACH CO	100 W WEST STREET	BALTIMORE	MD 21230
VALLEY TRUCKING CO	ROCK CUT QUARRY	CORRIGANVILLE	MD 21524

MASSACHUSETTS

Minority Owned Carriers

A & S DELIVERY SERVICE	P.O. BOX 267	ASHLAND	MA 01721
A D MCMULLEN INC	640 STATE ROAD	N DARTMOUTH	MA 02747
EDWIN J. PINA SR & SON	P. O. BOX 221	OSTERVILLE	MA 02655
F L LOWE TRUCKING CO INC	27 CROSSMAN STREET	MATTAPAN	MA 02126
FIRMINO D. SOUSA	53 NORFOLK ST	FALL RIVER	MA 02720
HENRY F OWENS MOVERS INC	130 FAWCETT STREET	CAMBRIDGE	MA 02138
HUG'S EXP. INC.	34 MASON RD	DUDLEY	MA 01570
JOHN A HANSON CO INC	365 DORCHESTER AVE	SO BOSTON	MA 02127
SIDNEY T SMITH	29 CRAWFORD STREET	BOSTON	MA 02121

MASSACHUSETTS

Female Owned Carriers

A.M.A. TRANSPORTATION	P. O. BOX 161	BURLINGTON	MA 01803
BEST WAY BROKERS	116 MT VERNON ST	LAWRENCE	MA 01843
BLUE RIBBON TRUCKING, INC.	476 HARTFORD PIKE	SHREWSBURY	MA 01545
CABRINI MOVING SERVICE INC	531 WORTHINGTON ST	SPRRINGFIELD	MA 01105
CARLTON TRUCKING CO INC	83 SOUTHGATE ST	WORCESTER	MA 01603
CHARLES C. TOWNE & SONS INC.	P.O. BOX 245	METHUEN	MA 01844
CITY TOWING SERVICE INC	876 BAY ST	SPRINGFIELD	MA 01109
CLIPPER LINES INC	83 WEXFORD STREET	NEEDHAM	MA 02194
CODY EXPRESS INC	P. O. BOX 445	NORWOOD	MA 02062
CONNORS BROS MVG & STG	370 COLE AVE	WILLIAMSTOWN	MA 01267
CONTROL EXPRESS INC	990 WASHINGTON ST	DEDHAM	MA 02026
COZY CAB & BUS CO INC	84 LAWRENCE ST	FALL RIVER	MA 02722
DIRECT CARRIERS INC	935 MILLBURY ST	WORCESTER	MA 01607
DOUGLAS MOTOR COACH	8 SURFSIDE AVE	WINTHROP	MA 02152
G.G.L. TRANSPORTATION	24 LINDEN ST	WEST BAYLSTON	MA 01583
GRAY VAN EXPRESS INC	PO BOX 1106	PITTSFIELD	MA 01202
H MAYNARD GOULD CO.	295 UNION ST.	E WALPOLE	MA 02032
JEFFSON INC	11 MT VERNON CIRCLE	LAWRENCE	MA 01843
LAWRY AIR FREIGHT	16 UNION AVENUE	WESTFIELD	MA 01085
M KORSON & CO INC	91 WASHINGTON ST	SOMERVILLE	MA 02143
MAKO SERVICES, INC	P. O. 71 MONSON	MONSON	MA 01057
S. FINGERMAN DELIVERY	302 LAWRENCE RD	MEDFORD	MA 02155
SERVICE CO. OF MASS.	116 MT. VERNON ST.	LAWRENCE	MA 01843
T F BOYLE TRANSPORTATION INC	15 RIVERHURST RD	BILLERICA	MA 01821
WAYSIDE TRANSP CO	530 SOMERVILLE AVE.	SOMERVILLE	MA 02143
WOLFFS EXPRESS CO INC	11 REPUBLIC	NORTH BILLERICA	MA 01862

MICHIGAN

Minority Owned Carriers

G & A TRANSPORTATION	237 BALDWIN	MONTROSE	MI 48457
G. & G. TRUCKING INC	26661 W. 10 MILE RD	SOUTHFIELD	MI 48034
H B G TRUCKING CO	24105 PIERCE AVE	SOUTHFIELD	MI 48075
H.J.M. DELIVERY INC	P. O. BOX 06963	DETROIT	MI 48206
HASKINS & SON INC	815 MAX AVENUE	LANSING	MI 48915
K & T AIR FREIGHT	16525 EASTLAND AVE	ROSEVILLE	MI 48066
L & B CARTAGE, INC.	7900 WEBSTER	FREELAND	MI 48623
MARTIN'S LEASING CO	6312 N. DORT HWY	FLINT	MI 48505
METRO AIRPORT B&W CAB	3646 HARRISON	INKSTER	MI 48141
MOBY DICK INC	815 MAX AVENUE	LANSING	MI 48915
O J TRANSPORT COMPANY	10290 GRAIOT AVENUE	DETROIT	MI 48213
R FREIGHT CARRIERS	5534 GREENBORO	KENTWOOD	MI 49508
RATLIFF TRUCKING	P. O. BOX 194	PLYMOUTH	MI 48170
SANG EXPEDITING INC	1612 HARVEST LANE	YPSILANTI	MI 48197
TOWNS CHARTER INC	2245 REDBUD	NILES	MI 49120
VINSONS TRUCKING INC	2703 MASON ST	FLINT	MI 48505

MICHIGAN

Female Owned Carriers

A H MISSANT INC	1930 MARSTON	DETROIT	MI 48211
ALPHA CARTAGE	45784 DENISE CT	PLYMOUTH	MI 48170
AMAZON INDEPENDENT TRANS.	12480 24TH AVE	MARNE	MI 49435
BESTWAY EXPEDITING, INC	760 E. VINE ST	KALAMAZOO	MI 49001
BRADLEY & SON MOVING & STG	1521 8TH STREET	PORT HURON	MI 48060
CENTRAL TRANSPORT INC.	34200 MOUND RD	STERLING HEIGHT	MI 48077
DIRECT EXPRESS, INC	P. O. BOX 2280	DEARBORN	MI 48123
EAGLE EXPEDITING	2715 RICHFIELD RD	FLINT	MI 48506
ELK EXPRESS LINES	5542 ANGLING RD	PORTAGE	MI 49003
EVERETT DELIVERY SERVICE	17625 FILER	DETROIT	MI 48212
FOREWAY TRANSPORTATION COINC	6633 LAKE MICHIGAN	ALLENDALE	MI 49401
GIN'S TRANSPORTATION	5000 WYOMING	DEARBORN	MI 48126
HARTER TRANSFER CORP	PRAIRIE AVE	STURGIS	MI 49091
HOLLAND MOTOR EXPRESS INC	750 EAST 40TH STREET	HOLLAND	MI 49423
K I N TRUCKING CO	229 HIGH ST.	NORTHVILLE	MI 48167
MARQUETTE BUS SERVICE	1414 GARFIELD	MARQUETTE	MI 49855
MBAR TRASNPORTATION	24350 JOY ROAD	REDFORD	MI 84239
OK MESSENGER SERVICE INC.	16313 TELEGRAPH RD.	TAYLOR	MI 48180
PERSON TO PERSON	3061 EASTLAND RD	MUSKEGON	MI 49441
R & S TRUCK LEASING	1651 WALKER RD	MUSKEGON	MI 49442
RADIO TRANSFER INC.	1240 FULLER, NE	GRAND RAPIDS	MI 49505
THOMAS C GORTER MOTOR EXP	2031 WALDORF NW	GRAND RAPIDS	MI 49504
THOMAS GOODFELLOW, INC.	5201 ROSA PARKS BLVD	DETROIT	MI 48208
W RENTAL CO	5404 HILLTOP DR	BAY CITY	MI 48706
WASCHER'S TRUCKING	201 ELM ST., BOX 88	GREENLAND	MI 49929
YANKS INC	229 S CEDAR ST	LANSING	MI 48912

MINNESOTA

Minority Owned Carriers

BAKER TRANSPORTATION	10400 INTERSTATE	MAPLE GROVE	MN 55369
CSI TRUCKING INC	15430 58TH STREET	STILLWATER	MN 55082
JESSE'S TRANSFER INC	13000 OVERLOOK ROAD	DAYTON	MN 55327
KVALEVOG TRUCKING	P. O. BOX 917	BEMIDJI	MN 56601
WIMER TRUCKING CO	RT 1 BOX 185	LITTLE FALLS	MN 56345

MINNESOTA

Female Owned Carriers

BDL TRUCKING INC	18026 UTE ST NW	ANOKA	MN 55302
CLOQUET TRANSIT CO INC	1306 CLOQUET AVE	CLOQUET	MN 55720
G & T TRUCKING CO.	11111 DEUCE ROAD	ELKO	MN 55020
JAHNS TRANSFER	417 S HOKAH ST	CALEDONIA	MN 55921
LEXINGTON TRANSFER INC.	1036 MCKAY DR NE	ANOKA	MN 55303
MARINE TRANSIT INC	1703 HIGHWAY TWO	DULUTH	MN 55810
MILBANK FREIGHTWAYS, INC	1860 E 28TH ST	MINNEAPOLIS	MN 55440
MINORITY UNIVERSAL CARRIERS	967 40 LANE	ANOKA	MN 55303
PRAIRIE LINE, INC.	505 COTTAGE GROVE	WOODBURY	MN 55125
SKY TRANSPORT, INC	3050 W. FIRST ST	DULUTH	MN 55806
TRANS-MIDWEST, INC	1749 SOUTH GREELEY	STILLWATER	MN 55082
W & S COMPANY	7804 IDAHO LANE	MINNEAPOLIS	MN 55445

MISSISSIPPI

Minority Owned Carriers

A & S TRUCKING CO	P. O. BOX 782	CLEVELAND	MS 38732
HANNAH TOURS, INC	852 MEADE ST	WEST POINT	MS 39773

MISSISSIPPI

Female Owned Carriers

BARKLEY TRAVEL SERVICE	4115 EAST BANKHEAD	NEW ALBANY	MS 38652
BARNETT'S MOVING & STORAGE	507 W. ADAMS ST	KOSCIUSKO	MS 39090
CAPITAL TRANSPORT CO INC	P.O. BOX 408	MC COMB	MS 39648
COBRA TRUCKING INC	P.O. BOX 2137	CLINTON	MS 39056
GOLLOTT & SONS TRANSFER & STG	1255 CAILLAVET ST	BILOXI	MS 39530
HALL'S WRECKER SERV	412 TEAGARDEN RD	GULFPORT	MS 39501
J R WILLIAMS TRANSFER&STG	521 E. PRESIDENT ST.	TUPELO	MS 38801
PLANTATION MOBILE HOMES	7 DOUGLAS DR	NATCHEZ	MS 39120
HIGHWAY TRAVEL AGENCY INC	750 NORTH STATE ST	JACKSON	MS 39201
TUNICA TRUCK LINE	P.O. BOX 369	MARKS	MS 38646

MISSOURI

Minority Owned Carriers

AL [illegible] TRANSWORLD VAN LINES	P.O. BOX 11998	ST LOUIS	MO 63112
[illegible]-WAY TRUCKING	P. O. BOX 197	LIBERTY	MO 64068
[illegible]	[illegible]17 N. MISSOURI	CAPE GIRARDEAU	MO 63701
NATIONAL EXPRESS, INC.	8136 [illegible] AVE.	ST. LOUIS	MO 63136
QUALITY DELIVERY	[illegible]	KANSAS CITY	MO 64120

MISSOURI

Female Owned Carriers

[illegible] TRUCKING	350 [illegible], AE	[illegible]WOOD	MO 65042
[illegible], INC.	1615 S. 10TH	ST. JOSEPH	MO 64503
COLUMBIA TRUCKING	P. O. BOX 1246	COLUMBIA	MO 65205
[illegible] & [illegible] CO	1017 [illegible] LA	ST LOUIS	MO 63104
[illegible] TRANSFER & STG CO	513 W OLIVE	SPRINGFIELD	MO 65806
[illegible] COOK INC	4100 [illegible] RD	[illegible]	MO 64150
[illegible] TRUCKING	ROUTE #3 BOX 101	BUTLER	MO 64730
[illegible] CO INC	7[illegible] DR	ST LOUIS	MO 63126
[illegible], INC	ROUTE 1 BOX 3	[illegible] CITY	MO 64747
[illegible] INC	P.O. BOX 9182	KANSAS CITY	MO 64168
[illegible]		[illegible]	MO 63065
[illegible] TRUCKING	3105 N. [illegible]	[illegible]	MO [illegible]
[illegible] LINES INC	RR 1 BOX 89	[illegible]	MO 64088
[illegible] TRANS	RT [illegible] BOX 1000	RICHMOND	MO 64085
[illegible] TRUCK SERVICES	6816 [illegible]WOOD	RAYTOWN	MO 64133
[illegible] TRUCK LINES, INC	BOX 1254	SEDALIA	MO 65301
[illegible]	721 OLIVE ST.	ST LOUIS	MO 63101
[illegible] CO INC	1717 PARK AVE.	ST LOUIS	MO 63104
[illegible] INC	P.O. BOX 213	LIBERTY	MO 64068
[illegible] TRUCK LINES INC	BOX 1254	SEDALIA	MO 65301
[illegible] INC	2020 WALNUT	KANSAS CITY	MO 64108
[illegible] INC	1918 LOCUST ST.	KANSAS CITY	MO 64108
[illegible] INC	1928 [illegible]	HIGH RIDGE	MO 63049
[illegible] TRUCK LINES INC	101 [illegible]	VERONA	[illegible]
[illegible] CLUB	P.O. BOX [illegible]	[illegible]	MO [illegible]

MONTANA

Minority Owned Carriers

COLUMBIA NAVIGATION, INC.	P.O. BOX 4065	MISSOULA	MT 59806

MONTANA

Female Owned Carriers

BITTERROOT AUTO RETRIEVAL	14182 CHIEF LK.GLS.	FLORENCE	MT 59833
C N EXPRESS	P. O. BOX 234	RAYNESFORD	MT 59469
DON TRIPP TRUCKING	HIWAY 12 & 93	LOLO	MT 59847
GARY G BUNDAY TRUCKING	35660 FRONTAGE ROAD	BOZEMAN	MT 59715
INTERMOUNTAIN TRANSP CO	7-9 MAIN STREET	ANACONDA	MT 59711
L.C. TRUCKING	1811 HARVE	MISSOULA	MT 59801
M S MOLITOR TRUCKING	BOX 259	BOULDER	MT 59632
NORTHERN TANK LINE	511 PLEASANT	MILES CITY	MT 59301
VALLEY DISPATCH	904 2ND AVE W.	COLUMBIA FALLS	MT 59912

NEBRASKA

Minority Owned Carriers

CASTAR TRUCKING INC	7840 "F" STREET	OMAHA	NE 68127
TRANSPORTATION SPECIALISTS	2120 SO.72ND	OMAHA	NE 68124
WILLARD P. MACKEY	P. O. BOX 11	NIOBRARA	NE 68760

NEBRASKA

Female Owned Carriers

A & W TRUCK BROKERS	7171 MERCY RD	OMAHA	NE 68106
BART LANG TRUCKING, INC.	RT 2 BOX 221A1	LEXINGTON	NE 68850
GOOD LIFE COACHES	4430 SO. 56TH	LINCOLN	NE 68516
MARQUETTE REGRIG. TRANS.	P.O. BOX 105	MARQUETTE	NE 68854
METRO MOVING SERVICES INC	10919 FRONTAGE RD	OMAHA	NE 68138
RED& WHITE MARKET & TRANSFER	1214 EAST SOUTH ST	HASTINGS	NE 68901
TWAY VAN & STG CO	1514 CHANDLER RD BX	OMAHA	NE 68107
TWO-WAY TRUCKING, INC.	4 GINGER COVE RD.	VALLEY	NE 68064
WIL - PAV	ROUTE 2	WAHOO	NE 68066
WINGS TRANSPORTATION	717 SO. 9TH ST	OMAHA	NE 68102

NEW HAMPSHIRE

Minority Owned Carriers

HART'S RAPID DELIVERY	127 COURT STREET	LACONIA	NH 03246

NEW HAMPSHIRE

Female Owned Carriers

A & R TRANSPORTATION	21 RIDGECREST DR	HUDSON	NH 03051
FEEDER EXPRESS	85 FACTORY ST	NASHUA	NH 03060
GRANITE STATE EXPRESS	266 N. TURNER ST	MANCHESTER	NH 03102
MANCHESTER SECURITY SERVICE	600 HARVEY RD	MANCHESTER	NH 03103
NASHUA MOTOR EXPRESS INC	270 AMHERST ST	NASHUA	NH 03063

NEW JERSEY

Female Owned Carriers

ADKINS TRUCKING & FRTLN INC	750 CHARLES ST	GLOUCESTER CITY	NJ 08030
APX INTERNATIONAL	851B MAIN ST	HACKENSACK	NJ 07601
BARRINGTON TRAVEL INC	610 WHITE HORSE PK	OAKLYN	NJ 08107
BAYARD TRUCKING	237 HARRISON ST	ELIZABETH	NJ 07208
BEE LINE INC	17 COMMERCE RD	FAIRFIELD	NJ 07006
CARAVAN COACH LINES, INC.	RD 3 BOX 451	WHARTON	NJ 07885
CLASSIC LIMO LTD	715 N. BURSHLEY AVE	VENTNOR	NJ 08406
CONNER TRAFFIC ASSOCIATES INC	ARBUTURS AVENUE	WENONAH	NJ 08090
DIAMOND K TRUCKING CO INC	23 TERMINAL ROAD	LYNDHURST	NJ 07071
DUNNS BUS SERVICE INC	RD 6 BOX 140	SUSSEX	NJ 07461
ELBERON EXPRESS	48 PLEASANT PLACE	DEAL	NJ 07723
FLORENCE MOTOR EXPRESS INC	306 E 5TH STREET	FLORENCE	NJ 08518
GRAND DETOURS INC	P. O. BOX 143	TENAFLY	NJ 07670
HENRY LEASING CO	46 ELY PLACE	E. ORANGE	NJ 07017
INAERBORO TRUCKING	P. O. BOX 569	METUCHEN	NJ 08840
J.K. VREELAND MOVING & STG	521 NORTH AVE	PLAINFIELD	NJ 07061
KAREN BUS CO.	132 LAKE AVE	BOONTON	NJ 07005
KIRBERY TRANS INC	425 MAIN ST	WOODBRIDGE	NJ 07095
LANGER TRANSPORT CORP	RT. 440, BOX 305	JERSEY CITY	NJ 07303
LEVITAN INTERSTATE TRANS	440 FLORINA GROVE RD	PERTH AMBOY	NJ 08861
LUMBER DISTRIBUTORS, INC.	COASTWISE & TYLERS S	PORT NEWARK	NJ 07114
M PASCUZZO SAND & STONE SUPL	CREEK RD RD2	MT. HOLLY	NJ 08060
M.B.G. LEASING	137 RTE 516	OLD BRIDGE	NJ 08857
MALLARD TRUCKING CO	68 HIGH STREET	NUTLEY	NJ 07110

NEW JERSEY

Female Owned Carriers

MELRHO, INC	P.O. BOX 500	COLTS NECK	NJ 07722
MENLO MOVERS, INC.	68 LIBERTY STREET	METUCHEN	NJ 08840
MOTOR CARGO TRANSPORT CORP	475 BURLINGTON RD	BRIDGETON	NJ 08360
PEGGY BOYLE	613 RUNYON AVE	PISCATAWAY	NJ 08854
PERILLO MOTOR LINES INC	499 CENTRAL AVE	NEW PROVIDENCE	NJ 07974
PFEFFERS DAILY EXPRESS	44 S WEST ST	VINELAND	NJ 08360
SCHRYVER MOTOR LINES	323 SUNSET ROAD	POMPTON PLAINS	NJ 07444
SERVICE PETROLEUM CARRIERS INC	544 PINEWOOD AVENUE	ROSELLE PARK	NJ 07204
SUBURBAN TRANSIT CORP	750 SOMERSET ST	NEW BRUNSWICK	NJ 08901
T. J. DELIVERY	BLDG 504 RARITAN CT.	EDISON	NJ 08837
TAYLORS EXPRESS INC	P.O. BOX 199	PENNSAUKEN	NJ 08110
TRANS. ENTERPRISES	37 EAST 27TH ST	BAYONNE	NJ 07002
VALLEY TRUCK RENTALS	RD. 5, BOX 286	JACKSON	NJ 08527
WHITE TIGER TRANSPORTATION	40 HACKENSACK AVE	SO KEARNY	NJ 07032

NEW JERSEY

Minority Owned Carriers

TRUE TRANSPORT	P.O. BOX 829	NEWARK	NJ 07101
UNITED EBONY TRANSPORT INC	P.O. BOX 3367	WALLINGTON	NJ 07057
WALLACE JACKSON TRUCKING	P. O. BOX 6003	NEWARK	NJ 07106
WALTON'S MOVING & EXPRESS CO.	15 WILLET ST.	BLOOMFIELD	NJ 07003

NEW JERSEY

Minority Owned Carriers

A & P BUS CO	263 EDWARDS ST	RIDGEWOOD	NJ 07450
A. COLE TRUCKING	81 MISSION STREET	MONTCLAIR	NJ 07934
APOLLO MOVING & STORAGE INC.	200 MURRAY STREET	NEWARK	NJ 07114
BRANTLEY BROS MOV & STG INC	17 FRELINGHUYSEN AVE	NEWARK	NJ 07114
CARTERET TRANSPORTATION	1000 BLAIR ROAD	CARTERET	NJ 07008
CLAUSEN YOUNG TRSF & STG, INC	260 LAFAYETTE PLACE	ENGLEWOOD	NJ 07631
D & D TRANSPORTATION CO	1050 EMPIRE AVENUE	CAMDEN	NJ 08103
D.E. TRANSTATION CORP	P.O. BOX 1182	PENNSAUKEN	NJ 08109
ENGLISH & SON	412 KINGS WAY	THORO FARE	NJ 08086
GARDEN STATE EXPRESS	145 ENGLE STREET	ENGLEWOOD	NJ 07631
[illegible] TCS EXPRESS SERVICE	464 ACADEMY STREET	SOUTH ORANGE	NJ 07079
J & B [illegible] TRUCKING	P. O. BOX 518	HOWELL	NJ 07731
JACKSON TRUCKING	208 S. 10TH STREET	NEWARK	NJ 07107
JERRY M BARNER & SONS	1215 [illegible] STREET	ROSELLE	NJ 07203
JIM CLARK & SON INC	7 TERRY LANE	WHARTON	NJ 07885
MILES TRUCKING & HAULING	17 PRICE LANE	SICKLERVILLE	NJ 08081
[illegible]'S TRUCKING INC	72 POMONA AVE	NEWARK	NJ 07112
[illegible] ENTERPRISES, INC	12-38 PLAZA RD	FAIR LAWN	NJ 07410
OLIVER BROWN TRUCKING CO INC	700 SOUTH P.O. BOX G	[illegible]	NJ 08346
[illegible] MOVING CO	108 76TH	NORTH BERGEN	NJ 07047
RANSOM REFRIGERATED [illegible]	941 FAIRMOUNT AVENUE	ELIZABETH	NJ [illegible]
[illegible]	316 PLEASANT DR	CHERRY HILL	NJ 08003
SMITH [illegible] TRUCKING	510 W. FRANKLIN RD	GLASSBORO	NJ 08028
[illegible]	50 [illegible] DRIVE	[illegible]	NJ [illegible]
[illegible]	525 E. BLACKWELL ST.	DOVER	NJ 07801

NEBRASKA

Female Owned Carriers

A & W TRUCK BROKERS	7171 MERCY RD	OMAHA	NE 68106
BART LANG TRUCKING, INC.	RT 2 BOX 221A1	LEXINGTON	NE 68850
GOOD LIFE COACHES	4430 SO. 56TH	LINCOLN	NE 68516
MARQUETTE REFRIG. TRANS.	P.O. BOX 105	MARQUETTE	NE 68854
METRO MOVING SERVICES INC	10919 FRONTAGE RD	OMAHA	NE 68138
RED& WHITE MARKET & TRANSFER	1214 EAST SOUTH ST	HASTINGS	NE 68901
TWAY VAN & STG CO	1514 CHANDLER RD PX	OMAHA	NE 68107
TWO-WAY TRUCKING, INC.	4 GINGER COVE RD.	VALLEY	NE 68064
WIL - PAV	ROUTE 2	WAHOO	NE 68066
WINGS TRANSPORTATION	717 SO. 9TH ST	OMAHA	NE 68102

NEBRASKA

Minority Owned Carriers

CASTAR TRUCKING INC	7880 "L" STREET	OMAHA	NE 68127
TRANSPORTATION SPECIALISTS	2[illegible] SO. [illegible]	OMAHA	NE 68124
WILLARD P. MACKEY	P. O. BOX [illegible]	NIOBRARA	NE 68760

NEVADA

Minority Owned Carriers

ABBOTT EXPRESS	5966 SMOKY CANYON DR	SPARKS	NV 89431
LEON BELAUSTEGUI	190 EAST 2ND ST	BATTLE MOUNTAIN	NV 89820.
RAY & ROSS TRANSPORT	300 WEST OWENS AVE	LAS VEGAS	NV 89106
WESTSIDE CHARTER SERVICE	120 W. MCWILLIAMS ST	LAS VEGAS	NV 89106

NEVADA

Female Owned Carriers

BELL LUXURY	100 SUNSHINE LANE	RENO	NV 89502
EULALIE MAGA	P. O. BOX 225	WINNEMUCCA	NV 89445
JERGENS MOVING & STG INC	2577 E 2ND	RENO	NV 89504
SILVER STATE EXPRESS	P. O. BOX 11561	RENO	NV 89510
THERESA & SONS TRUCKING	3555 [illegible] CREEK AVE	N. LAS VEGAS	NV 89030
WHITTLESEA-BELL LIMO	1910 INDUSTRIAL RD	LAS VAGAS	NV 89102

NEW MEXICO

Minority Owned Carriers

FRANK BACA	122 LOS RANCHOS RD	ALBUQUERQUE	NM 87107
HERRERA COACHES, INC	1430 GATEWOOD RD	ALBUQUERQUE	NM 87105
MAYPOLE PACKER SALES	P.O. BOX 1672	HOBBS	NM 88240
SHUTTLEJACK INC	1600 LENA ST	SANTA FE	NM 87501
TREVINO TOURS & AIRPORT LIMO	1409 W. PICACHO	LAS CRUCES	NM 88001

NEW MEXICO

Female Owned Carriers

APACA MOVG. & STGE., INC.	423 WYOMING SE	ALBUQUERQUE	NM 87123
BURKETT MOVING & STG CO INC	400 SYCAMORE ST	CLOVIS	NM 88101
ONEY ENTERPRISE INC	204 SAN MATEO RD	MILAN	NM 87020
PALACE TRANSFER & STG CO	101 7TH STREET	ALAMOGORDO	NM 88310

NEW YORK

Minority Owned Carriers

AMERICA TRAVELS, INC	84-03 NORTHERN BLVD	JACKSON HGHTS.	NY 11372
AY-LEET TRANSPORTATION	10034 FRANCIS LEWIS	HOLLIS	NY 11429
BUFFALO DTN DUMP TRUCK S&S INC	113 GILLETTE AVENUE	BUFFALO	NY 14214
CHAMBER TRANSPORT INC	53-02 11TH STREET	LONG ISLAND CTY	NY 11101
CLAUDE MYERS	563 NEW HEMPSTEAD RD	SPRING VALLEY	NY 10977
COSMOPOLITAN BUS CORP	45 KEEGANS LANE	NEW YORK	NY 10308
EXPO EXPRESS OF NY	82 LANDON ST	BUFFALO	NY 14208
FALK TRANSPORTATION CO INC.	10 EWING AVENUE	SPRING VALLEY	NY 10977
FIESTA BUS CORPORATION	78 RAMONA AVE	STATEN ISLAND	NY 10312
FRED PATTERSON	1224 BRUNSWICK AVE	FAR ROCKAWAY	NY 11691
LAROSA DELMONTE EXPRESS INC	1133-35 TIFFANY ST.	BRONX	NY 10459
NYACK BUS COMPANY	P. O. BOX 155	POMONA	NY 10970
QUADRA BUS CORP	2644 ATLANTIC AVE	BROOKLYN	NY 11207
QUIX MESSENGER SVC	3 HORIZON DRIVE	HUNTINGTON	NY 11743
TRU-MORE TRKG INC	P. O. B. 192	BROOKLYN	NY 11205
UPTON TRANSPORTATION	325 SPRING ST	NEW YORK	NY 10013

NEW YORK

Female Owned Carriers

A E WHITE MOVING	49 - 55 FRONT ST	EAST ROCKAWAY	NY 11518
AMERICAN COURIER	99 PURCHASE ST	RYE	NY 10580
ARROW BUSINESS TOURS INC	50 EAST 42ND ST	NEW YORK	NY 10017
B & E TRANSPORTATION	970 KENSINGTON AVE	BUFFALO	NY 14215
CAYUGA SERVICE INC	121 RIDGE RD	LANSING	NY 14882
CROZIER BROS VAN LINES	460 TARRYTOWN RD.	WHITE PLAINS	NY 10607
D.D.F. TRANSPORTATION	6495 TRANSIT RD	BOWMANSVILLE	NY 14026
DAPHNE TEMBLIS TRUCKING	22 - 55 77 ST	JACKSON HTS	NY 12370
DONS MOVING & STORAGE INC	897 BROADWAY	ALBANY	NY 12207
E YOUNGS EXPRESS INC	1200 BRADLEY ST RD	WATERTOWN	NY 13601
EMBA BUS SERVICE, INC	1411 NEWBRIDGE ROAD	NO.BELLMORE	NY 11710
FINNEGANS WAREHOUSE CORP	PO BOX 1167 20 DICKS	NEWBURGH	NY 12550
GEORGE M. CARROLL TRANS.	RT 17K, P.O.BOX 2522	NEWBURGH	NY 12550
HOWARD MT TRANS CORP	8950 56TH AVE	ELMHURST	NY 11373
JJT TRUCKING CORP	77-25 170TH ST	FLUSHING	NY 11366
JOHN M. RAPP VAN LINES, INC.	537-39 BROADWAY	KINGSTON	NY 12401
JOVE TRANSPORT CORP.	3703 PROVOST AVE	BRONX	NY 10466
LATOURS MOVING & STG	308 HARRISON ST	FULTON	NY 13069
LOCKPORT TRUCKING & WHSE.	129-02 NORTHERN BLVD	CORONA	NY 11368
MOHAWK MOVING & STG	450 DUANE AVE	SCHENECTADY	NY 12303
MORRIS MILLER TRUCKING	RT 60	CASSADAGA	NY 14718
NORMAS EXPRESS INC	2756 KENMORE AVE.	TONAWANDA	NY 14150
P J GARVEY CTG & STG INC	465 CORNWALL AVE	BUFFALO	NY 14215
P J LOMBARDI TRUCKING	1308 71ST ST	BROOKLYYN	NY 11228

NEW YORK

Female Owned Carriers

P. FANTASIA TRUCKING CORP	359 DONGAN HILLS AVE	STATEN ISLAND	NY	10305
R.T. TRUCKING, INC.	56-15 TERRACE	MASPETH	NY	11378
ROSE C. MARCHESANO, INC	1205 FRANKLIN AVE	GARDEN CITY	NY	11530
S & L TRANSPORTATION, INC.	59-21 156TH ST.	FLUSHING	NY	11355
SEMCA MOTOR LINES, INC.	77-15 19TH RD.	JACKSON HGTS.	NY	11370
SHOREVILLE TRUCK RENTALS	38 ROOSEVELT PLACE	MASSAPEQUA	NY	11758
SUBURBAN MESSENGER SERVICE	S4785 LAKESHORE	HAMBURG	NY	14075
TLC SENIOR TOURS LTD	118 BROOK ST.	SCARSDALE	NY	10583
UTICA CARTING STG & CONT	150 N. GENESEE ST.	UTICA	NY	13502

NORTH CAROLINA

Minority Owned Carriers

A.L. SHAW & SONS	HWY 11 SOUTH	RIEGELWOOD	NC 28456
BELL TRUCK LINE	ROUTE #1, BOX 390	JACKSON	NC 27845
DEESE COACH LINE	P.O. BOX 338	PEMBROKE	NC 28372
EASTERN DELIVERY SERVICE	P.O. BOX 1643	WILMINGTON	NC 28402
HAILEY & SON TRUCKING	1109 EAST GREEN DR	HIGH POINT	NC 27261
HATCHER PICKUP & DELY SERV INC	3818 PATTERSON ST	GREENSBORO	NC 27407
JONES BUS CO	P. O. BOX 1018	GOLDSBORO	NC 27530
K.M. PULLEY TRUCKING	112C PHOTINIA CT	ROCKY MOUNT	NC 27801
LUMBEE TRUCKING	ROUTE 2 BOX 139 A	MAXTON	NC 28364
MCBROOM COACH, INC	ROUTE 1, BOX 351-A	DURHAM	NC 27705
MEDLEY BUS COMPANY	P.O. BOX 365	HAMLET	NC 28345
PLEASANT TOURS, INC	RT 4 BOX 320	STATESVILLE	NC 28677
VALLEY COACH COMPANY	P. O. BOX 155	FAYETTEVILLE	NC 28302

NORTH CAROLINA

Female Owned Carriers

AIR CARGO SERVICES, INC	P.O. BOX 31227	RALEIGH	NC 27622
ASHEVILLE TOURS	164 HILLSIDE ST	ASHEVILLE	NC 28801
B & B LINES, INC	114 N. CATHERINE ST.	AHOSKIE	NC 27910
BOOMERANG EXPRESS	4127 BRYNWOOD DR	COLFAX	NC 27235
BOWENS MOVING & STORAGE INC	P.O. BOX 822	GOLDSBORO	NC 27530
BROWN TRAVEL SERVICE	902 E. MAIN STREET	CHERRYVILLE	NC 28021
CARPENTER TRUCKING CO INC	1810 MILTON RD	CHARLOTTE	NC 28215
CATO TRANSPORT INC	1791 WESTCHESTER DR.	HIGH POINT	NC 27260
CHARLES T BROWN TRUCK LINES	1208 BUFF ST	GREENSBORO	NC 27406
CHRISTY TRUCKING CO. INC	RT. 8, BOX 112	MOCKSVILLE	NC 27028
CLAYS TRANSFER CO INC	HIGHWAY 93 EAST	ROCKY MOUNT	NC 27801
EMPIRE TRANSPORTATION	P. O. BOX 767	DOBSON	NC 27017
GREEN ACRE	P. O. BOX 947	PLYMOUTH	NC 27962
HAL MAST TRUCKING CO INC	RT 1 BOX 259	SUGAR GROVE	NC 28679
HOUSER TOURS	307 S ELM STREET	CHERRYVILLE	NC 28021
KANNAPOLIS TRANSIT CO INC	625 S MAIN	KANNAPOLIS	NC 28081
MANNING TOURS INC	P.O. BOX 385	ELIZABETH CITY	NC 27909
MCGEE TRUCKING INC	P.O. BOX 297 MAIN ST	BOSTIC	NC 28018
MODERN MOVING & STG INC	537 S. EASTERN BLVD.	FAYETTEVILLE	NC 28302
MOUNTAINEER TRANSPORTATION	P. O.BOX 16279	ASHEVILLE	NC 28816
N & M TRUCKING, INC	105 CASE ST	MORGANTON	NC 28655
P & B TRAVELS	P. O. BOX 253	LEXINGTON	NC 27292
PIEDMONT GRADING & WRECKING	3652 BEATTIES FORD	CHARLOTTE	NC 28216
SILVERMAN COMPANY	48 SWANNANOA RIVER	ASHEVILLE	NC 28805

NORTH CAROLINA

Female Owned Carriers

SPECIAL OCCASION SERVICES	1003 E. CATAWBA ST	BELMONT	NC 28012
STANLEYS TRANSFER CO INC	950 1000 N. MARINE B	JACKSONVILLE	NC 28540
TKG TRANSPORT	RT. 1, BOX 679	ALBEMARLE	NC 28001
TRAVEL ASSOCIATES INC	P.O. BOX 1608	STATESVILLE	NC 28677
WRIGHT MOTOR LINES INC	135 THOMPSON ST	ASHEVILLE	NC 28803

NORTH DAKOTA

Minority Owned Carriers

HIDATCO INC	P.O. BOX 849	NEW TOWN	ND 58763

NORTH DAKOTA

Female Owned Carriers

DEE JAY TRANS. CO, INC	P.O. BOX 651	HORACE	ND 58047
KARRIERS INC	7095 14 ST	GRAND FORKS	ND 58206
MINOT VAN & STORAGE CO., INC.	308 8TH ST., N.E.	MINOT	ND 58701
VIKING OIL & HOTSHOT SERVICE	INDUSTRIAL PARK	MOHALL	ND 58761

OHIO

Minority Owned Carriers

B. J. EXPRESS, INC	4928 ASSISI LANE	CINCINNATI	OH 45238
CARGO TRANSPORT INC.	918 WEST FIFTh ST	DAYTON	OH 45407
FRANCES DELIVERY INC	1140 MT. VERNON BLVD	CLEVELAND	OH 44112
HILSON MOVING & TRANSFER CO.	P.O. BOX 1872	YOUNGSTOWN	OH 44505
KTA TRANSPORTATION & LEASING	RT.1, BOX 89	SHILOH	OH 44878
L.H. MOORE TRUCKING	1018 VANCE STREET	TOLEDO	OH 43607
MCTODD TRUCKING, INC	971 AVONDALE AVE	CINCINNATI	OH 45229
RAMEX TRANSPORTATION	242 N. WALNUT ST	YOUNGSTOWN	OH 44503
SILVER COACH INC	3904 LEDGEWOOD DR	CINCINNATI	OH 45229
TAB TRUCKING INC	4342 JANITROL ROAD	COLUMBUS	OH 43228
TRANS-POWER TRUCK	5321 SOUTHWYCK	TOLEDO	OH 43614
VOYAGEN II TRAVEL	3752 E 127TH	CLEVELAND	OH 44105

OHIO

Female Owned Carriers

AMERICAN BELMONT COACHWAYS	66140 BELMONT	BELMONT	OH 43718
AUTUMN INDUSTRIES INC	3875 HERR FIELDHOUSE	SOUTHINGTON	OH 44470
BERES MOVING & STORAGE	15145 LORAIN AVE	CLEVELAND	OH 44111
BEST-WAY MOTOR LINE	P. O. BOX 604	BRYAN	OH 43506
BEULAH M. SEALS	12343 OAK DR	ORIENT	OH 43146
BRYAN TRUCK LINE INC	610 E WILSON ST	BRYAN	OH 43506
BUCKEYE MOTOR SERVICE	5316 W ST RT 718	TROY	OH 45373
CCM ENTERPRISES, INC.	P.O. BOX 24030	CINCINNATI	OH 45224
CHARTER EXPRESS INC.	8418 TALLMADGE RD.	RAVENNA	OH 44266
CHICAGO & COASTAL MOTOR	5936 STUMPH RD, #318	PARMA	OH 44130
CLARK TRUCKING, INC	711 CLYMER RD	MARYSVILLE	OH 43040
COWEN TRUCK LINE INC	RT 2	PERRYSVILLE	OH 44864
D. HAMILTON TRUCKING, INC.	141 WILLIS STREET	BEDFORD	OH 44146
DUFFY & DEBLASS INC	P. O. BOX D	BELLAIRE	OH 43906
E.B. COMPANY, INC.	667 FRONT STREET	BEREA	OH 44017
ECK CARTAGE COMPANY	13775 OLD PLEASANT	CLEVELAND	OH 44130
EMICK MOTOR FREIGHT, INC	220 CO. RD. 398	FREMONT	OH 43420
FISHER GILDER & BORD MTR EXP	3650 CONNECTICUT AVE	YOUNGSTOWN	OH 44501
G & M AUTO CO	7224 EUCLID AVENUE	CLEVELAND	OH 44103
GALION & MANSFIELD TRANSIT	1271 BOWMAN ST	MANSFIELD	OH 44903
GRANNY'S EXPRESS INC	11910 ENTERPRISE DR.	CINCINNATI	OH 45241
H&H TRANSPORTATION INC	1425 E MAIN ST	NEWARK	OH 43055
HAMILTON TRUCK CORP.	141 WILLIS STREET	BEDFORD	OH 44146
HARRIS MOTOR EXPRESS INC	4261 CRAWFORD AVE.	CINCINNATI	OH 45223

OHIO

Female Owned Carriers

HARSHMAN INDUSTRIAL CARTAGE	1617 WARREN AVE	NILES	OH 44446
HARVEY & SONS M & S	2528 GASSER BLVD	ROCKY RIVER	OH 44116
HOWARD M HOWES INC	514 N. MAIN ST.	BALTIMORE	OH 43105
K G BROWN TRUCKING CO INC	61 W ROUTZONG DR	FAIRBORN	OH 45324
KEAL DRIVEWAWAY CO	852 EAST 73RD ST	CLEVELAND	OH 44103
LARLEE LEASING INC	524 N WAYNE AVENUE	LOCKLAND	OH 45215
LEWIS & MICHAEL INC	1827 WOODMAN DR	DAYTON	OH 45420
M & H TRANSPORT SERVICE	385 SOUTH ERIE ST	TOLEDO	OH 43602
MARTINBIRD ENTERPRISES	292 AMFIELD COURT	GAHANNA	OH 43230
MERRICK & SONS MOVING INC	5820 WEBSTER STREET	DAYTON	OH 45401
MIDWEST VAN LINES	1350 STIMMEL RD	COLUMBUS	OH 43223
MINERVA TRANSFERR CO	403 MCKINLEY AVE	MINERVA	OH 44657
NAT FARINACCI & SON INC	415 TEMPLE RD	GRAND RIVER	OH 44045
NEW WORLD TRAVEL	124 E. MAPLE	BRYAN	OH 43506
NORRIS BROTHERS CO., INC	2138 DAVENPORT AVE	CLEVELAND	OH 44114
P AND J TRANSPORTATION	RT. 295, BOX 39	BERKEY	OH 43504
PLEASURE TOURS	295 E. MAIN ST.	CHILLICOTHE	OH 45601
QUALITY DELIVERY CO	P. O. BOX 30405	GAHANNA	OH 43230
RIGGS FOOD EXPRESS INC	433 W MONROE ST	NEW BREMEN	OH 45869
SILHOUETTE TOURS & TRVEL INC	564 CIN. BATAVIA PIKE	CINCINNATI	OH 45244
SOUTHEAST TRUCKING CO	8418 TALLMADGE RD	RAVENNA	OH 44266
STEEL AWAY TRANSPORTATION	1900 HAMILTON AVE	CLEVELAND	OH 44114
THE ACE MOTOR TRANSPORT CO	3103 TIFFIN AVE.	SANDUSKY	OH 44870
THE WAHL MOVING & TRANSFER	16100 S. WATERLOO RD	CLEVELAND	OH 44110
TLX CARTAGE	292 AMFIELD COURT	GAHANNA	OH 43230
TRI AREA TRUCKING CO	320 W EDGERTON ST	BRYAN	OH 43506
TRI-STATE CARTAGE	5148 TRACTOR ROAD	TOLEDO	OH 43612
TRIP & TRAVEL INC	4050 WEST TUSCARANAS	CANTON	OH 44708
W.P.TRUCKING	P. O. BOX 642	GENEVA	OH 44041
WEIR EXPRESS	11256 CORNELL PK LN	CINCINNATI	OH 45242
WENHAM TRANSPORTATION	3200 E. 79TH Street	CLEVELAND	OH 44104

OKLAHOMA

Minority Owned Carriers

ELLIOT TRUCK LINES, INC.	BOX 1	VINITA	OK 74301
GOLD TRANSIT SYSTEMS	P. O. BOX 26203	OKLAHOMA CITY	OK 73126
GUTIERREZ BROS INC	51 N. TRENTON	TULSA	OK 74120
JOE SANCHEZ	RT 7 BOX 240	SHAWNEE	OK 74801
REM TRANSPORT CO.	4259 S. 76 E. AVE.	TULSA	OK 74145
TURNER TRUCK SERVICE	R1 BOX 520 K 45	BLANCHARD	OK 73010

OKLAHOMA

Female Owned Carriers

ACE CONSTRUCTION & TRUCKING		LONGDALE	OK 73755
BARTLETT TOURS	520 1/2 S. 3RD	PONCA CITY	OK 74601
CANADIAN HAULING, INC	3307 N.E. 10TH ST	OKLAHOMA CITY	OK 73117
DECKERT TRANSPORT, INC	16709 E. ADMIRAL	TULSA	OK 74116
EXPLOSIVES CARRIER INC	8212 S BRYANT RT 8	OKLAHOMA CITY	OK 73129
FRANKS AND SON INC	RT 1 BOX 108 A	BIG CABIN	OK 74332
HAMILTON TRUCKING CO OF OKLA	12612 EAST ADMIRAL	TULSA	OK 74116
HODGES MOVING	P. O. BOX 45571	TULSA	OK 74145
KRAFT TROUS SIGHTSEEING CORP	7992 E. 41ST ST.	TULSA	OK 74145
L V FRENCH TRUCK SERVICE INC	P. O. BOX 15116	OKLAHHOMA CITY	OK 73115
MCCORKLE TRUCK LINE INC	1547 S. EAST 25TH	OKLAHOMA CITY	OK 73143
PHILLIPS LEASING CO	816 SOUTH OKLAHOMA	OKMULGEE	OK 74447
PUNNEO'S SERVICE	P. O. BOX 156	LONE GROVE	OK 73443
SUN LINE CORP	BOX 145	BURNS FLAT	OK 73624
TRAVEL TOURS	BOX 40, HIGHWAY 51 W	WAGONER	OK 74467
W C CARRIERS INC	P. O. BOX 519	BETHANY	OK 73008

OREGON

Minority Owned Carriers

AICRAG CORPORATION	12244 N.E. WHITAKER	PORTLAND	OR 97230
BYRNE TRUCKING, INC.	P.O. BOX 280	MEDFORD	OR 97501
JOE BROWN CO INC	P.O. BOX 1669	ARDMORE	OR 73401
LEON TRUCKING CO	P.O. BOX 10124	EUGENE	OR 97403
MONIZE TRUCKING	1582 RUSSELL ROAD	MERLIN	OR 97532
NATIONAL RATE & BROKERAGE	3133 NW ST HELENS RD	PORTLAND	OR 97210
S & F TRUCKING INC	ROUTE 1 BOX 79	JOSEPH	OR 97846

OREGON

Female Owned Carriers

A & P INTL. INC	1001 S.W. 5TH	PORTLAND	OR 97204
A J DUNN	MAIN STREET	PAISSLEY	OR 97636
AFFORDABLE TOURS	20815 NW SAUVIES IS.	PORTLAND	OR 97231
C.A.D. BUILDING SUPPLIES	9715 N.E. PRESCOTT	PORTLAND	OR 97220
CENTRAL PACIFIC FREIGHT LINES	P.O. BOX 11380	EUGENE	OR 97440
CHRISDAL TRANSPORTATION	1960 S.W. 187TH AVE	ALOHA	OR 97006
DANA YOUNG'S ENTERPRISES	6343 MILL CREEK RD	TURNER	OR 97392
DEAN ALLEN	12382 SOUTH MULINO	CANBY	OR 97013
FRAN KREGER TRUCKING	RT 3 BOX 885	ALBANY	OR 97321
GUIDELINE TRUCKING	4307 MIDWAY AVE	GRANTS PASS	OR 97526
H & H TRUCKING, CO.	7739 NE 21ST AVE.	PORTLAND	OR 97211
J 6 L TRANSPORT	P. O. BOX 209	CANBY	OR 97013
K AND V TRUCKING	980 FERN RIDGE RD	STAYTON	OR 97383
MCGEE TRUCKING	28999 S.E. DALE	EAGLE CREEK	OR 97022
MORRIS TRANSFER	P.O. BOX 129	MALIN	OR 97632
NORTHWESTERN TRADING CO INC	BOX 173	MILTON FREEWATE	OR 97862
PACK-TRAIN, INC	4114 RIDGEWAY DR. SW	TURNER	OR 97392
RESORT BUS LINE	1223 N E FIRST ST	BEND	OR 97701
SOUTHERN OREGON TRANSF & STG	1825 NW WASHINGTON	GRANTS PASS	OR 97526
STATE TRANSPORT CO	P.O. BOX 1022	CORVALLIS	OR 97330
TALENT TRUCKING	P.O. BOX 320	TALENT	OR 97540
THOEN TRUCK RENTALS	13124 NW SUE STREET	PORTLAND	OR 97229
UNIQUE ADVENTURES INC	7330 EASTLAKE COURT	WILSONVILLE	OR 97070
WOOD PLY MATERIALS TRADING	P.O. BOX 23127	PORTLAND	OR 97223

PENNSYLVANIA

Minority Owned Carrier

BLACK & WHITE EXPRESS INC	217 AMERICAN AVE	BUTLER	PA 16001
EMANUELS EXPRESS	201 E TOWNSHIP LINE	KIRKLYN	PA 19082
GROGAN BROTHERS	1200 HILL AVENUE	PITTSBURGH	PA 15221
HILL & PERRY, INC.	960 SWEDESFORD ROAD	EXTON	PA 19341
KNIGHT LINES, INC	P.O. BOX 896	PITTSBURGH	PA 15108
LEEWAY FLEET LINES	1218 CHESTNUT ST	PHILADELPHIA	PA 19107

PENNSYLVANIA

Female Owned Carriers

A A LIMOUSINE SERVICE	P. O. BOX 78	BREINIGSVILLE	PA 18031
AMITY ENTERPRISES	5111 CLAIRTON BLVD	PITTSBURGH	PA 15236
ANDERSON TRANSFER	231 BURTON AVE	WASHINNGTON	PA 15301
B & W BUS SERVICE	210 W. HIGH ST	BELLEFONTE	PA 16823
CAMTRANS, INC	211 N. OLIVE ST	MEDIA	PA 19063
CAROL LINES, INC	4450 RISING SUN AVE	PHILADELPHIA	PA 19140
CENTRAL VALLEY TRANSP	P.O. BOX 125	HOWARD	PA 16841
CHAR-LYN TRUCKING	RD5 BOX 259	DUNCANSVILLE	PA 16635
CHAS A STOECKLER INC	3 SPRING ST	WILKES BARRE	PA 18702
CHUCK GIDES TOURS	1605 FREEPORT ROAD	NATRONA HEIGHTS	PA 15065
DEBOLT-SOMERSET BUS CO	335 E 7TH AVENUE	HOMESTEAD	PA 15120
E J LOWERY TRUCKINGCO INC	2801 WALNUT STREET	MCKEESPORT	PA 15132
ENVIRONMENTAL CLEANING	361 WYOMING AVE	KINGSTON	PA 18704
F.E.KERR CO	379 PENN AVE	SHARON	PA 16146
FRAMES MOTOR FRT INC	P. O. BOX 1600	WESTCHESTER	PA 19380
FRITZ MOVING CO INC	620 NORTH 8TH STREET	READING	PA 19601
G C HEMPHILL TRUCKING INC	P. O. BOX 404	BURGETTSTOWN	PA 15021
GARTTMEYER MOVING & STORAGE INC	955 JAYMOR ROAD	SOUTHAMPTON	PA 18966
H A HARTMAN & SON INC	537 N FRONT ST	STEELTON	PA 17113
HORNS MOTOR EXPRESS INC	115 SPRING VALLEY RD	CHAMBERSBURG	PA 17201
J C STILWELLS SON	1 N MORTON AVE	MORTON	PA 19070
J.B.M. INC	P. O. BOX 241	EVANS CITY	PA 16033
JEM ENTERPRISES, INC	405 HANSEN AVE	BUTLER	PA 16001
JOHN S EWELL INC	BOX 104	EAST EARL	PA 17519

PENNSYLVANIA

Female Owned Carriers

KARAVAN LINES	1609-R HARMER	LEVITTOWN	PA 19057
KATHRYN L LEITH INC	P. O. BOX 132	COOPERSBURG	PA 18036
KEYSTONE LIME CO		SPRINGS	PA 15562
KRENN TRUCK LINES, INC	RD 4 BURTNER RD	BUTLER	PA 16001
LAKE ERIE TRUCKING CO.	3025 WEST 17TH ST.	ERIE	PA 16505
LANGLEY TRAFFIC SVC INC	2777 US RT. 1	TREVOSE	PA 19047
LAVCO INC	432 N. MAIN ST.	TAYLOR	PA 18517
LINCOLN TOURS, INC	10 W ELM AVENUE	HANOVER	PA 17331
LINDEMAN MOVING CO INC	2010 GREENWOOD ST.	HARRISBURG	PA 17104
LODESTAR BUS LINES	230 THEATRE DR	JOHNSTOWN	PA 15904
MCKEAN & BURT INC.	326 W. MAIDEN ST.	WASHINGTON	PA 15301
NED E BARD	120 S. MAPLE AVE.	LEOLA	PA 17540
OIL TANK LINES INC	BOX 190	DARBY	PA 19023
P&D LUMBER HANDLING CO	POTHOUSE RD.	PHOENIXVILLE	PA 19460
QUICK SERVICE BROKERAGE	40 MARKET ST	PITTSTON	PA 18640
RAIDER TRUCK LINES	R.D. 1, BOX 399B	VANDERGRIFT	PA 15690
REEDERS INC	BOX 156, WOODLAND AV	MODENA	PA 19358
ROANS TRUCKING SERVICE	2100 WHITNEY ROAD	WILLIAMSPORT	PA 17701
THEDA REDA TRAVEL SERVICE LTD	906 3RD AVE.	NEW BRIGHTON	PA 15066
W H JOHNS INC	35 WITMER RD	LANCASTER	PA 17602
W.R.S. ENTERPRISES	BAY #14,900 CALCON	SHARON HILL	PA 19079
YELLOW JACKET EXPRESS	P.O. BOX 42	CONWAY	PA 15027
YOUNG'S LIMOUSINE	945 NEWTOWN RD	WARMINSTER	PA 18974

RHODE ISLAND

Female Owned Carriers

B.J.T. TRANSPORT	1060 WILLETT AVE	E.PROVIDENCE	RI 02915
BLUE RIBBON TRANSP CO INC	55 DELTA DR	PAWTUCKET	RI 02360
DODD'S TRANSPORTATION INC	48 MAPLE AVENUE	WEST WARWICK	RI 02893
EAST COAST TRANSPORTATION	38 BELLEVUE AVE	NEWPORT	RI 02840
GENERAL TRANSPORTATION, INC.	208 GANSETT AVENUE	CRANSTON	RI 02910
GOLDMAN TRUCKING CO., INC.	RFD 4 PUTNAM PIKE	ESMOND	RI 02917
J & H TRUCKING CO INC	37 CYPRESS ST	WARWICK	RI 02888
JOHN ALBANESE TRUCKING CO INC	49 TAPPAN ST	PROVIDENCE	RI 02908
LAMBS EXPRESS	110 CEMETRY ST.	PROVIDENCE	RI 02904
MURRAYS MOVING & STG CO	40 CHURCH ST	PAWTUCKET	RI 02862
RAY BENNIT TRUCKING & MVG CO	57 MIDDLE ST	WOONSOCKET	RI 02895
SPECIAL COMMODITIES INC	RFD 8, GEO WASH HWY	SMITHFIELD	RI 02917
TRIANGLE TRANSPORT CO INC	74 SULYMIA ST	CUMBERLAND	RI 02864

SOUTH CAROLINA

Minority Owned Carriers

ANDREW C HOOKARD	117 ASHEVILLE HWY	INMAN	SC 29349
DERRICCKS CHARTER SERVICE	P.O. BOX 604	LEXINGTON	SC 29072

SOUTH CAROLINA

Female Owned Carriers

A P MOZINGO	ROUTE 2	BISHOPVILLE	SC 29010
ASHLEY TRANSFER & STG INC	P.O. BOX 70451	CHARLESTON	SC 29483
PALMETTO MOTOR LINES INC	7153 LONE OAK ROAD	SPARTANBURG	SC 29303
SMITH TRUCKING CO INC	ROUTE 4	LANCASTER	SC 29720
SUNBELT EXPRESS INC	P.O. DRAWER 13008	FLORENCE	SC 29504
TAMWAY CORP	P.O. BOX 771	SIMPSONVILLE	SC 29681

SOUTH DAKOTA

Female Owned Carriers

BARBER TRANSPORTATION	P.O. DRAWER 1970	RAPID CITY	SD 57709
BLACK HILLS & WESTERN TOURS	1600 E. ST. PATRICK	RAPID CITY	SD 57701
BLUE EXPRESS INC	BOX 292	CANTON	SD 57013
BRACHT TRANSPORTATION	1505 ELMWOOD DR	MILBANK	SD 57252
BURKE GRAIN CO	HY 65 & 20	ISABEL	SD 57633
HEEREN TRUCKING CO.	114 2ND STREET EAST	LEMMON	SD 57638

TENNESSEE

Minority Owned Carriers

A. M. DELIVERY EXPRESS	P.O. BOX 16235	CHATTANOOGA	TN 37416
ALL AMERICAN MOVING & STORAGE	4340 HWY 51 NORTH	MEMPHIS	TN 38127
ELLIOTTS TRUCKING CO	3470 ELDER CAVE	MEMPHIS	TN 38109
SHEARON TRUCKING CO.	P.O. BOX 387	ASHLAND CITY	TN 37015
STATELINE SYSTEMS INC	2709 GRANDVIEW AVE	NASHVILLE	TN 37204

TENNESSEE

Female Owned Carriers

ALADIN VAN LINES	PO BOX 2345	KNOXVILLE	TN 37901
BII EXPRESS INC	201 W. MAIN ST	MURFREESBORO	TN 37130
BLUEGRASS TRANSPORTATION	BOX 17758	NASHVILLE	TN 37217
CENTRAL & SOTRUCK LINES INC	3215 TULANE RD BX 30	MEMPHIS	TN 38130
CHICKASAW MOTOR LINE, INC	531 WOODYCREST AVE	NASHVILLE	TN 37210
FERGUSON TRANSFER CO INC	601 SPRINNG ST	JOHNSON CITY	TN 37601
GALLATIN PORTLAND FRT LINES	JAMES STREET	GALLATIN	TN 37066
GENE L HICKS	240 RIDGECREST DR	MADISONVILLE	TN 37354
K & K WAREHOUSE CO	P. O. BOX 7088	KNOXVILLE	TN 37921
LIFE LIVE FOOD CARRIER	RTE 4 BOX 290	PIKEVILLE	TN 37367
QUICK WAY CARRIERS, INC.	P.O. BOX 600	LA VERGNE	TN 37086
STILL TRANSFER CO INC	632 BOONE ST	KINGSPORT	TN 37660

TEXAS

Minority Owned Carriers

A D LEASING INC	8237 MCELROY	EL PASO	TX 79907
ACOSTA FRUIT & VEGETABLE CO	RT 1 BOX 129A	MISSION	TX 78572
BERRY BROTHERS	4411 SPAY STREET	DALLAS	TX 75216
CARLIN UNITED TRUCKING	1024 CARLIN COVE	ROUND ROCK	TX 78664
CAZADOR TRANSP SERVICES INC	1220 BARRANCA DR #2D	EL PASO	TX 79935
EXCEL TRAFFIC CONSULTANTS	P. O. BOX 61664	D/FW AIRPORT	TX 75261
FLOOD AUTO DELIVERY	801 NORTH 2ND ST	KILLEEN	TX 76541
HOUSTON INTERMODAL TRUCKING	6406 LAPORTE ROAD	DEER PARK	TX 77536
J.J. MESA TRUCKING CO.	1500 S ZARZAMORE ST	SAN ANTONIO	TX 78207
JAMES PATTON	1570 TARBERRY	HOUSTON	TX 77088
KWIK EXPRESS, INC	2828 ARROYO DRIVE	DALLAS	TX 75219
M- TRANSPORTATION	4607 OLD COACH LANE	SAN ANTONIO	TX 78220
ODELL MIKEL TRUCKING	7221 NORVIC	HOUSTON	TX 77020
R G B TRANSPORTATION CO INC	1034 HUMBLE	EL PASO	TX 79926
SUPER CARRIER COMPANY	3460 LEE BLVD	EL PASO	TX 79935
SWARB TRUCKING	10409 O'DONNELL	HOUSTON	TX 77076
TRANSPORT PACKAGING	3301 CONFLAUS RD	IRVING	TX 75061

TEXAS

Female Owned Carriers

ALPHA OMEGA BROKERAGE CO	P. O. BOX 3948	IRVING	TX 75062
B C VACUUM SERVICE	P. O. BOX 1057	NEDERLAND	TX 77627
B&W EXPRESS INC	P. O. BOX 2122	SAN ANTONIO	TX 78297
CUSTOM BUS LEASING INC	645 HWY 1378	WYLIE	TX 75098
DALHAR DISTRI CO INC	400 W MAIN	DALLAS	TX 75208
DIXIE TRUCK LINE INC	1619 4TH ST	ROSEBERG	TX 77471
FOUR J ENTERPRISES INC	3822 W PARK AVENUE	ORANGE	TX 77630
HAZELS HOT SHOT SERVICE	14041 PRESTON RD	DALLAS	TX 75240
J & E TRANSPORT	P. O. BOX 1418	TEMPLE	TX 76503
JOHN FOWLER TRUCKING	12 ROBINDDALE LA	BURLESON	TX 76028
K W ENTERPRISES	P. O. BOX 344	KRUM	TX 76249
LARISCEY ENTERPRISES	RT6 BOX 1441-J	ODESSA	TX 79763
LAVERN GIBSON SERV. CO.	110 HWY 43	HENDERSON	TX 75652
LONE STAR TRAVELERS, INC	5771 ENID SUITE A	HOUSTON	TX 77009
MORGAN EXPRESS INC	10130 MONROE DR	DALLAS	TX 75229
OASIS LINES INC	P. O. DRAWER 1043	PHARR	TX 78577
PATCO FREIGHT CARRIERS	1003 S. LELIA	TEXARKANA	TX 75504
POE-BROAD TRAVEL	2927 MAPLE	DALLAS	TX 75201
QUIK SERVICE DELY	2319 SCHILDER ST	HOUSTON	TX 77093
RICKEY ENTERPRISES	P. O. BOX 492	GALENA PARK	TX 77547
RODGERS HOTSHOT	7902 BRAESDALE	HOUSTON	TX 77071
SAM LATTNER DISTRIBUTING	114 SOUTH ELLIS ST	GROESBECK	TX 76642
SMITTYS AIR FREIGHT & DELY	3447 HAWES	DALLAS	TX 75235
SNIDERS TEXAS TRAIL TOURS	P. O. BOX 1075	WAXAHACHIE	TX 75165
STINSON MOTOR LINES	RT. 1, BOX 256	GLEN ROOSE	TX 76043
TEXAS SHIPPERS ASSN INC	2311 BUTLER ST	DALLAS	TX 75235
TEXAS U.S. TRUCKING	3061 HARDY ST	FT. WORTH	TX 76106
VEHICLE DELIVERY SERVICE	1752 BROWN TRAIL	HURST	TX 76053

UTAH

Minority Owned Carriers

TRAFFIC DISTRIBUTION	1792 SO. REDWOOD RD	SALT LAKE CITY	UT 84104

UTAH

Female Owned Carriers

AHA INC	501 EAST CENTER	PANGUITCH	UT 84759
LA RUE LAMB TRUCKING	BOX 374	MYTON	UT 84052
LYNN HARDY	1650 W. SOUTHGATE	SALT LAKE CITY	UT 84119
S & E TRUCKING	3858 WEST 6290 SO	W. JORDAN	UT 84084
W.S. HATCH CO	643 SOUTH 800 W.	WOODS CROSS	UT 84087
WRIGHT WAY TRANSER	540 SO UNIVERSITY	PROVO	UT 84663

VIRGINIA

Minority Owned Carriers

ALEXANDER BUS CO	212 FERNWOOD RD	CHESAPEAKE	VA 23320
BAILEY'S TRANSPORTATION	519 DARNABY AVE	HAMPTON	VA 23661
BEN-RUS CORPORATION INC	P. O. BOX 70	LIGNUM	VA 22726
CHASTEEN WILLIS	RT 6 BOX 108A	HARRISONBURG	VA 22801
COPELAND TRUCKING CO INC	5000 PUGHSVILLE ROAD	CHESAPEAKE	VA 23321
ELLIOTT F. FISHER	P. O. BOX 322	ACCOMAC	VA 23301
HODGE TRUCKING INC	RT.1, BOX 231C	MARTINSVILLE	VA 24112
JARVIS TRUCKING LINES	1210 E. WASHINGTON	SUFFOLK	VA 23434
JOS. B. CHERRY BUS SERVICE	964 POLLARD ST	NORFOLK	VA 23504
MAE BUS SERVICE	501 RIDDICK CIRCLE	SUFFOLK	VA 23434
PRETLOW BROS. TRUCKING	121 E. MARSHALL ST	RICHMOND	VA 23219
R. JOHNS TRANSFER, INC	2206 PATTERSON, SW	ROANOKE	VA 24016
RUDY VINES TRUCKING	5109 GOLDSBORO DR.	NEWPORT NEWS	VA 23605
Z.V.V. INC	RT 7 BOX 538	STAFFORD	VA 22554

VIRGINIA

Female Owned Carriers

A & A TRANSFER CO	4235 SIDEBURN RD	FAIRFAX	VA 22030
ADKINS TRAVEL SERVICE	323 WITHERS CIRCLE	DANVILLE	VA 24541
ALLIANCE VAN LINES	13900 BARNSFIELD RD	HERNDON	VA 22071
AUTO TRANSPORT INC	2701 NEWQUAY LANE	RICHMONND	VA 23235
BRISTOL VAN & STORAGE CORP.	952 SULLINS ST.	BRISTOL	VA 24201
CAPITAL CITY COACH INC	1120 N. DANVILLE ST.	ARLINGTON	VA 22201
CREATIVE BUS TOURS	7223 CENTREVILLE RD	MANASSAS	VA 22111
CROWDER'S TRANSF. & STRG. CO.	1219 FIRST STREET	ALEXANDRIA	VA 22314
D & J TRANSPORTATION	308 GARFIELD	FREDERICKSBURG	VA 22401
D.J.P. CO	724 CARROLLTON AVE	SALEM	VA 24153
DAYTON TRANSPORT CORP	P. O. BOX 338	DAYTON	VA 22821
GEO W CLOWSER INC	111 FEATHERBED LANE	WINCHESTER	VA 22601
GUNTER TRUCKING	5204 OAKMONT CIRCLE	ROANOKE	VA 24019
LYNCHBURG STORAGE CO	1323 JEFFERSON ST	LYNCHBURG	VA 24505
MORGANS TOUR & TRAVEL	109 LAKE POWELL RD	WILLIAMSBURG	VA 23185
NESTER TRANSFER INC	2531 ALABAMA AVE	NORFOLK	VA 23513
NORTHERN NECK TOURS	P. O. BOX D	CALLAO	VA 22435
RAUCHINGS TRUCK LINE INC	P. O. BOX 831	EMPORIA	VA 23847
T W MAYTON TRANSFER CO INC	252 E. BANK ST., PO	PETERSBURG	VA 23804
THRIFTY RED CARPET COACHES	2480 S. GLEBE ROAD	ARLINGTON	VA 22206
TRAVEL LINES LEASING	3640 NANSEMAND PKY	SUFFOLK	VA 23435
TRAVEL MATES OF VA, INC	869 HIGH ST	HARRISONBURG	VA 22801
TRIDENT CORP	P. O. BOX 1450	FALLS CHURCH	VA 22041
VIRGINIA TOURS INC	2101 LOUMOUR AVE.	RICHMOND	VA 23220

WASHINGTON

Minority Owned Carriers

AMERICAN CONTAINER TRANSPORT	7350 W. MARGINAL WAY	SEATTLE	WA 98106
AMERICAN TRANSPORT	840 HALLORAN BLVD	BOW	WA 98232
DE MAR ENTERPRISES INC	RT 5 BOX 5249 A	WENATCHEE	WA 98801
FIN-A-KEY EXPRESS, INC	6719 42ND ST	SEATTLE	WA 98118
MAUST TRANSFER CO.	1762 6TH AVE. SOUTH	SEATTLE	WA 98134
PATERSON TRUCKING	BOX 2071	BLAINE	WA 98230
SPOKANE FORD MOTOR FREIGHT	E 3927 GRACE	SPOKANE	WA 99207

WASHINGTON

Female Owned Carriers

3 W TRUCKING INC	P.O. BOX 2382	YAKIMA	WA 98907
AA STAR TRAN	2210 COMMERCE ST	ABERDEEN	WA 98520
ALASKA COAST TRANSPORT	4501 W. MARGINAL WAY	SEATTLE	WA 98106
ALEXANDERS INC.	E 3129 TRENT	SPOKANE	WA 99202
ASSOCIATED COURIERS INC	P.O. BOX 98870	SEATTLE	WA 98188
BLUEBIRD TRANSFER INC	2410 E 5TH STREET	VANCOUVER	WA 98661
DAYBREAK DISPATCH	9013 NE HWY, #L	VANCOUVER	WA 98665
EMERALD CITY	23028 100TH AVE	EDMONDS	WA 98020
ENUMCLAW TRANSFER & STG	501 GRIFFIN	ENUMCLAW	WA 98022
ESTES TRUCKINGCO INC	4203 S 297TH PLACE	AUBURN	WA 98002
EUNICE L HENGEVELD	RT 1 BOX 46	MOXEE	WA 98936
GARFIELD TRANSFER CO INC	200 SW 34TH ST	RENTON	WA 98055
GRAYWAYS	P. O. BOX 80841	SEATTLE	WA 98108
HOGLAND TRANSFER CO	3221 PAINE ST	EVERETT	WA 98201
JACK CREAGER TRUCKING	3812 SO. 243	KENT	WA 98032
KMD INC	18628 72ND AVE. S.	KENT	WA 09031
LITTLE SHIRLEYS TRANSP INC	2821 9TH ST. NE	PUYALLUP	WA 98371
LOWER COLUMBIA TRUCKING INC	1802 BAKER WAY	KELSO	WA 98626
ROY N. CARLSON,INC	P.O. BOX 725	STANWOOD	WA 98292
SORENSON TRANSP CO INC	632 NW AVERILL ST	CHEHALIS	WA 98532
SWEET TRANSFER & STG	3203 15TH ST	EVERETT	WA 98201
SYSTEM TRANSFER & STG CO	2400 6TH AVE SO	SEATTLE	WA 98134
THOMAS SCALZO CO	3211 AIRPORT WAY S.	SEATTLE	WA 98134
WESTERN MARINE TRUCKING INC	RT. 1, BOX 72B	LACENTER	WA 98629

WASHINGTON

Female Owned Carriers

WESTERN MOVING SERVICES	14582 SANDY HOOK RD	POULSBO	WA 98370
WHITE STAR VAN & STG INC	P. O. BOX 777	EVERETT	WA 98206
WOODLAND TRUCK LINE INC	635 PARK ST	WOODLAND	WA 98674

WEST VIRGINIA

Female Owned Carriers

DORSEY TOURS	504 ELIZABETH AVE	SO. CHARLESTON	WV 24303
KITTLE HAULING & SUPPPLY CO INC	1817 VIRGINIA ST.	MOUNDSVILLE	WV 26041
MOUNTAINEER TOURS	1704 18TH STREET	HUNTINGTON	WV 25701
REFRIGERATED EXPRESS INC	720 12TH ST E	HUNTINGTON	WV 25701
SISSON'S MOBILE HOME	6501 MACCORKLE AVE	CHARLESTON	WV 25304
TALBERT TRUCKING	P. O. BOX 6373	CHARLESTON	WV 25302
TESA COMPANY, INC.	P. O. BOX 4217	PARKERSBURG	WV 26104

WEST VIRGINIA

Minority Owned Carriers

BROWN'S TRANSFER	405 EAST MAIN STREET	RONCEVERTE	WV 24970

REPRODUCED AT U.S. GOVERNMENT EXPENSE

WISCONSIN

Female Owned Carriers

BADGER COACHES INC	200 W BELTLINE HWY	MADISON	WI 53713
CARE-FREE TRAVEL	RT 1 BOX 65	NEW FRANKEN	WI 54229
CASHEN MOVING & STG.	2831 S 9TH ST	MILWAUKEE	WI 53215
CHASE TRUCKING CO	121 N. GROVE ST	BERLIN	WI 54923
DAVE HAAS INC	203 E BIRCH	THORP	WI 54771
DUFRANE MOVING CO., INC.	43 JOHN ST	FOND DU LAC	WI 54935
E. W. JONES TRUCKING CO., INC.	5701 W RAWSON AVE.	FRANKLIN	WI 53132
E.L.K. EXPRESS	33507 JANESVILLE	MUKWONAGO	WI 53149
FAIRWAY TRANSIT INC	N10 W 24730 HWY TJ	PEWAUKEE	WI 53072
GREENWOOD TRUCKING LTD	RR 4 HWY 12	BARABOO	WI 53913
GRETCHEN PETERSON TOURS INC	6325 ODANA RD	MADISON	WI 53719
H&K TRANSPORTATION	8907 120TH AVE	KENOSHA	WI 53142
HARVEY SERVICE INC	6001 W STATE ST	WAUWATOSA	WI 53213
JONES TRANSFER LINE INC	P.O. BOX 217	HARTFORD	WI 53027
MARGARET RAGONESE	2463 WEST ST.PAUL	MILWAUKEE	WI 53233
MARTIN TRUCKING	R 1 BOX 219B	SULLIVAN	WI 53178
PROFESSIONAL COACH DELY.	P. O. BOX 15223	MILWAUKEE	WI 53215
RAEMARC INC	1903 CHICORY RD.	RACINE	WI 53403
ROBINSON TRANSFER CO INC	1809 ST. JAMES ST.	LA CROSSE	WI 54601
S & K LEASING CORP	221 1ST ST	BLOOMINGTON	WI 53804
SPARTA-LA CROSSE TRK. LINES	RR 5 BOX 468	SPARTA	WI 54656
SUJAX INC	R2 BOX 30D	UNION GROVE	WI 53182
T.A.S. SR	BOX 188 RT 2	EAGLE	WI 53119
TARRELL TRANSFER INC	4905 DUTCH MILL RD	MADISON	WI 53716
WISCONSIN COACH LINES INC	901 NIAGARA ST	WAUKESHA	WI 53187

WISCONSIN

Minority Owned Carriers

FOX RIVER TRUCKING INC	P. O. BOX 183	MILWAUKEE	WI 53201
QUINCE UNLOADING & FRT HNDLING	1502 SHIRLAND AVENUE	BELOIT	WI 53511

WYOMING

Minority Owned Carriers

ROBERT QUINN	P. O. BOX 1472	ROCK SPRINGS	WY 82901

WYOMING

Female Owned Carriers

AAVON MOVING & STG INC	1900 WYOTT DR.	CHEYENNE	WY 82001
AIR FREIGHT INC	TERMINAL BOX 2	CASPER	WY 82602
ROCKET HOT SHOT	94 CALYPSO	CASPER	WY 82601

CANADA

Minority Owned Carriers

DOMAN-MARPOLE TRANSPORT LTD.	435 TRUNK ROAD	DUNCAN, BC	CN V9L2P5
J. COUGHLIN TRUCKING	9222 - 60 AVE	EDMONTON, AL	CN T6C4G1

1210

Small Community Service Study

as Mandated by Section 28 of the Motor Carrier Act

September 1, 1982

Office of Transportation Analysis
Interstate Commerce Commission

1887

ERRATA

In the first printing of this report, Tables A-2 through A-18 of Appendix A contained labeling errors. The lines labeled as "under 5,000" contained the information for respondents in towns with population of 5,000 - 15,000, and the lines labeled as "5,000 - 15,000" contained the information on under 5,000 population towns. The error was confined to the tables only and has been corrected in this printing of the report.

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PREFACE

In response to the requirement set forth in Section 28 of the Motor Carrier Act of 1980, the Interstate Commerce Commission has completed a thorough investigation of trucking service to and from small communities. This report contains the results of our investigation.

This study was accomplished by the Commission's Office of Transportation Analysis (OTA) with the assistance of the Office of Compliance and Consumer Assistance (OCCA). OTA developed the study plan, analyzed the results and wrote the report. OCCA had primary responsibility for obtaining responses to the survey of small community shippers.

Questions or comments regarding this document may be forwarded to the Office of Transportation Analysis, (202) 275-7684.

SMALL COMMUNITY SERVICE STUDY

EXECUTIVE SUMMARY

Service to small communities was a concern central to Congress when they approved the Motor Carrier Act of 1980. It was feared that when carriers were given the freedom to allocate their fleet and resources to maximize profitability, they would abandon service to small communities. This report contains the results of an intense study of the effects of the Act on truck service to small and isolated communities.

Highlights of this study include the following:

Shipper Profile

- Shippers in small communities reported a relatively high reliance on for-hire truck service. Over 23 percent of the respondents use for-hire motor carriage only and 70 percent use some mix of private and for-hire motor carriage.
- The range of activity among shippers is large, extending from less than one shipment per month to over 1,200 shipments per week.
- Small shipment service is important to small community shippers. This was borne out by the fact that less than 500 pounds was the most frequently mentioned shipment size.

Quality of Service

- Results of this study indicate little change in the quality or availability of service over the 18-month period. Where changes have occurred, they have generally been positive.
- Shippers reporting service availability improvement ranged from 3 to 8 times higher than those reporting poorer service availability (measured by the ratio of shippers reporting more availability to those reporting less availibility). In addition, respondents reported more carriers starting service than carriers stopping service.

- The majority of respondents reported that service was always or almost always on time, and that on-time performance compared to six months earlier had remained about the same. This consistency of performance was reported for both inbound and outbound shipments.

- The majority of respondents reported that their shipments arrived always or almost always in good condition. Comparing this to performance six months earlier, 7% to 16% of the respondents reported that their freight was arriving in good condition more often.

- The vast majority of shippers, 85% to 92% indicated that options for receiving and sending their freight by for-hire truck were about the same as six months before. The remaining 8% to 15% reported a change in the availability of options with 2 to 4 times as many respondents reporting more options than those reporting fewer options.

- Shippers indicated that the two most important sources of price information were the carrier and shippers' own experience; between 40% and 47% indicated that price information came from carriers and an additional 21% to 31% relied on their own experience for price information. Less than 6% relied on Published Tariffs or Rate Bureaus.

- Motor carrier complaint levels have been in a downward trend. There was a sharp decline in small community complaint levels immediately following the Motor Carrier Act. Since the Act, small community complaints have averaged less than half of the pre-Act level. Also, small community complaints concern similar problems as their larger community counterparts.

Small Community Rates

- For 1976, there was little difference in the cost to shippers of moving a typical shipment to or from a small community when compared with the cost of a similar movement to or from a metropolitan area.

- In the more competitive environment of 1980, rates on shipments to or from the smallest communities were slightly less than those for similar shipments to or from larger cities.

Common Carrier Obligation

- The increase in common carrier price/service options, reduced complaint levels, and excess capacity, suggests that there has been no need to expand our enforcement program relating to the common carrier service obligation.
- The Commission is currently re-examining the duty imposed on motor carriers to provide transportation coextensive with all points and services contained in their certificates.

Conclusion

Changes in motor carrier service to small and isolated communities following passage of the Motor Carrier Act of 1980 were assessed. We examined availability of motor carrier service, all aspects of service quality, and rates to and from small communities. This included indirect measures such as shipper complaints relating to motor carrier service. The results of this study are remarkably consistent. While regulatory reform has caused no dramatic changes in small community rates or service, changes that did occur were generally favorable. In the vast majority of cases, shippers reported very little change in quality of service as measured by on-time performance, loss and damage claims and availability. In addition, where changes did occur, improvement in service was reported much more often than service deterioration. Complaints about trucking service in small communities have decreased significantly since passage of the MCA. Finally, an examination of rates indicates that rates to and from small communities have increased less rapidly than rates to or from larger cities.

These results can lead to only one conclusion. The Motor Carrier Act of 1980 has not harmed shippers in small and isolated communities. In fact, the evidence suggests that small communities have actually benefitted from this legislation.

SMALL COMMUNITY SERVICE STUDY

INTRODUCTION

In Section 28 of the Act, Congress mandated a thorough investigation of service to small communities. This report contains the results of that study. There are four main sections to the report. First, is a summary and analysis of the results of the three phases of the shipper survey. Second, a discussion of rates to and from small communities. Third, a discussion of the common carrier obligation. The last section of the report contains a summary of the Commission's complaint file and an analysis of complaints from small communities.

In addition to the main body of the report, Appendix A contains detailed information on the results of shipper questionnaires. Appendix B discusses questionnaire design and includes a copy of the questionnaire. Appendix C discusses the survey plan, and Appendicies D and E provide information on the Beale's Code, a method of defining areas by population and proximity to metropoliton areas. Appendicies F and G contain a copy of the complaint form and a listing of complaint reasons. Finally, Appendix H provides detailed information on rate regressions for small and large communities.

SHIPPER SURVEY

The focus of the Commission's investigation was a shipper survey--a questionnaire mailed to approximately 1,200 randomly selected businesses in randomly selected small communities throughout the United States. The method for selecting the communities and the businesses within the communities is detailed in Appendix C.

The businesses were broken into two groups. Each group received two questionnaires asking them to comment on the prior six-month period. By breaking the businesses into two groups, we were able to make three separate mailings at approximately six-month intervals and still not require a single business to respond more than two times. The three mailings were January 1981 (Group 1), July 1981 (repeated Group 1 and added Group 2), and January 1982 (repeated Group 2). Each mailing is reported as a phase of the study, i.e., three mailings equal three phases. Responses from the three phases have been tabulated and are shown in Appendix B. By analyzing the results of all three phases, shipper experiences can be compared for the eighteen-month period following passage of the Act.

Results and Analysis

Results of the shipper survey are based on the useable questionnaires returned in each of the three phases of the survey. Table 1 shows the number of useable questionnaires returned by each group in each phase of the study.

TABLE 1

Phase	No. of Questionnaires		Response Rate
	Mailed	Returned	
Phase 1 (Jan. '81) Group 1	485	374	77.1%
Phase 2 (July '81)			
Group 1	374	288	77.0%
Group 2	737	498	67.6%
Phase 2 (Jan. '82)			
Group 2	498	335	67.3%

The Results and Analysis Section is divided into five parts:

A. Shipper Profile

B. Availability of Service

C. Quality of Service

D. Shipping Cost Information

E. Conclusions

A. Shipper Profile. In order to obtain an adequate profile of the respondents completing this questionnaire, a number of background questions about shipping activity were included in the survey.

Shipping data questions were also asked because this survey offered a unique opportunity to acquire randomly selected nationwide data on small community shippers. Previous studies have generally been either regional or case study investigations of small community shippers. This study includes a large randomly selected nationwide sample of small community businesses; it, therefore, serves as a more complete data base than previous small community studies.

Tables 1 through 5 of Appendix A provide summary shipping data extracted from the questionnaires returned in the three phases of this study. The cross-tabulation of the shipper sample (Table A-1) shows that very few firms use only private carriage, either for receiving or sending freight. Only about 1 percent of the shippers returning questionnaires reported that they used strictly private carriage for both inbound and outbound freight. From 2.2 percent to 5.6 percent of the shippers who only receive freight reported that they receive their freight by private carriage. Over 23 percent of the shippers use for-hire carriage only and over 70 percent use some mix of private and for-hire carriage, thus underscoring the high reliance on for-hire transport service. These figures are about the same in each of the three phases indicating that passage of the Act has had little effect on the type of service used by small community shippers.

The number of different transport types used by the shippers in the sample is impressively large. In particular, the large number of shippers using for-hire service such as general freight, bus package service, or air freight service for sending freight indicates high reliance upon service other than private carriage, UPS, or Parcel Post. Table 2 shows the high and low percentages of respondents who used selected types of for-hire carriage for sending shipments.

TABLE 2

TYPE OF CARRIER SELECTED FOR ORIGINATING SHIPMENTS

Type of Carrier	Percent of Respondents Using Service	
	Highest	Lowest
General Freight	25.7	20.7
Bus Package	13.9	10.5
Air Freight	6.6	4.0

Similarly, with regard to receiving freight, although private carriage, UPS, and Parcel Post are used by the majority of shippers, the use of other transport types--notably general freight carriers--is very high (Table A-2).

The range of traffic among shippers in this sample is large, extending from less than one shipment per month to over 1,200 shipments per week (Table A-3). However, about 80 percent of the respondents received between 1 and 10 shipments per week and about 80 percent sent between 1 and 10 shipments per week. The range of shipment size among shippers was also large; however, the most frequent shipment size was less than 500 pounds. (Table A-4). There appears to be no change in these shipment characteristics (i.e., frequency and size) over the eighteen-month period of the study. This indicates the importance of small shipment service to businesses in small communities.

Table A-5 indicates that many shippers not only have access to more than one carrier, but that they actually utilize more than one carrier.

B. Service Availability. A concern central to the Congress when they approved the Motor Carrier Act of 1980 was the Act's impact on service to small communities. It was feared that when carriers were given the freedom to allocate their fleet and resources to maximize profitability, they would abandon service to small communities. The three phases of the shipper survey, however, show little change in service and where there has been change, it has generally been positive. This is true for both availability and quality of service.

Tables 6 through 8 of Appendix A provide the summary "service availability" data extracted from the questionnaires returned in the three phases of this study. The following two tables, Table 3 for inbound traffic and Table 4 for outbound, summarize the change in availability of service. These tables show that there has been little if any change in service availability over the eighteen-month period of this study.

TABLE 3 (Inbound)

	Percent of Respondents		
Service Availability	Phase 1	Phase 2	Phase 3
Always or Almost Always Available	83.2%	85.1%	80.6%
Usually Available	13.7%	10.7%	17.2%
Never or Sometimes Available	3.2%	4.2%	2.3%

TABLE 4 (Outbound)

Service Availability	Percent of Respondents		
	Phase 1	Phase 2	Phase 3
Always or Almost Always Available	78.5%	85.1%	85.7%
Usually Available	14.1%	9.0%	12.3%
Never or Sometimes Available	7.3%	5.9%	2.1%

Question 5B asked the respondents to rate the change in service availability over the previous six months (Table A-7). In Phase 1, 13.1% reported inbound service more available than pre-July 1981 and only 1.7% reported that service was available less often. In Phase 2, 16.5% reported improved service availability and 2.2% said service had deteriorated. For Phase 3, 9.5% reported better service availability and 3.1% reported poorer service availability. In each of the three phases, those reporting service availability improvement were 4 to 8 times higher than those reporting poorer service availability. Question 11 (Table A-8) confirms this general improvement of service availability as more respondents reported more carriers starting service than carriers stopping service.

C. Quality of Service. The three phases of the survey show little change in the quality of service. Where there has been change, it has been similar to that reported for service availability. The changes in service availability and quality of service have been small and they generally have been positive.

Tables A-9 through A-15 of Appendix A provide the summary "Quality of Service" data extracted from the questionnaires returned in all three phases of this study.

The majority of the respondents reported that service was always or almost always on-time (Table A-9), and that on-time performance compared to six months earlier had remained about the same (Table A-10). This lack of change in on-time performance was reported for both inbound and outbound traffic. Table 5 summarizes this for the three phases of the study. Outbound traffic data are shown in parentheses.

TABLE 5

Inbound (Outbound) On-time Traffic Comparisons

On-time Rating	Percent of Respondents Phase 1	 Phase 2	 Phase 3
	(percentage)	(percentage)	(percentage)
Always or almost always	67.8 (66.1)	66.7 (74.1)	69.8 (80.7)
Usually on time	28.4 (27.7)	26.8 (21.8)	26.3 (16.9)
Never or sometimes	3.8 (6.2)	6.5 (4.0)	4.0 (2.3)
On time more often than 6 months ago	18.2 (16.3)	19.0 (17.0)	12.4 (9.4)
On time less often than 6 months ago	2.0 (5.7)	3.7 (3.0)	1.9 (2.2)

The majority of the respondents also reported that their shipments arrived always or almost always in good condition (Table A-11). Comparing this to performance six months earlier, 7% to 16.2% of the respondents reported that their freight was arriving in good condition more often and less than 4.1% of the respondents reported that their freight was arriving in good condition less often. This is summarized for the three phases in Table 6. Outbound traffic data are shown in parentheses.

TABLE 6

Inbound (Outbound) Traffic Condition Comparison

Freight Condition	Percent of Respondents		
	Phase 1 (percentage)	Phase 2 (percentage)	Phase 3 (percentage)
Arrived always or almost always in good condition	78.3 (82.5)	82.4 (86.7)	87.6 (91.1)
Usually arrived in good condition	16.4 (14.4)	12.9 (9.3)	9.0 (5.0)
Never or sometimes arrived in good condition	5.3 (3.1)	4.7 (4.0)	3.3 (3.9)
In good condition more often than 6 months earlier	14.2 (16.2)	15.2 (14.6)	14.7 (7.0)
In good condition less often than 6 months earlier	4.1 (3.1)	3.5 (2.3)	2.9 (0.4)

A minor exception to the favorable results following the Act is that in Phase 1 of the study shippers indicated that they were having more difficulty in resolving loss claims than prior to July 1980 (Table A-13). However, both Group 1 and Group 2 reported fewer problems in resolving claims when responding to the questionnaire the second time, i.e., a smaller percentage reported that they were having problems resolving claims. This seems to indicate that there were some problems between July 1980 and January 1981, but that they were worked out between the shippers and carriers without any intervention from the ICC or other Government agency.

The shipper survey also attempted to evaluate service quality by having shippers indicate shifts, if any, from private to for-hire service or from for-hire to private (Table A-14). To the extent that no shift reflects satisfaction with current service, the vast majority (95% to 97%) appear satisfied. The remaining 3% to 5% shifted between for-hire and private. This shift is summarized in Table 7.

TABLE 7

Shift of Inbound (Outbound) Traffic Between Type of Carrier

Shift	Percent of Respondents		
	Phase 1	Phase 2	Phase 3
From private to for-hire	1.1 (2.4)	0.9 (0.3)	1.7 (1.8)
From for-hire to private	3.1 (1.0)	2.3 (3.3)	1.5 (0.7)

When asked about service options, i.e., "choices for ways to receive and ship their freight by for-hire truck," 86% to 92% of the receivers of freight and 85% to 90% of the senders of freight said their choices were about the same as 6 months before (Table A-15). The remaining 8% to 15% reported a change in the number of options with 2 to 4 times as many respondents reporting more options than those reporting fewer options (Table A-15).

D. Shipping Cost Information. Because of the potential confusion regarding trucking rates, the questionnaire did not ask shippers about rates (see Appendix B discussion and the separate section on rates on page 16.) However, it did ask whether they knew their freight charges before they received truck service.

This was asked for two reasons: (1) to gauge shipper reliance on rate bureaus and published tariffs as a source of price information; and (2) to determine if shippers were becoming more price conscious through, for example, carrier efforts to be more price competitive. The results show that by far the two most important sources of shipper advance knowledge regarding price are the carrier and the shipper's own experience (Table A-16). Only 0.9 to 6.0 percent used published tariffs and 0.3 to 3.7 percent used rate bureaus. As to whether shippers are obtaining price information in advance more often, the data are not clear. Of the receivers of freight, 5.3% to 7.6% said they have knowledge in advance less often, while 1.6% to 7.5% said they have knowledge in advance more often. Of senders of freight, the range was 3.5% to 4.3% less often and 2.8% to 9.9% more often (Table A-17). The absolute number who did not know the freight charges in advance was surprisingly large with from 34.2% to 41% of receivers that never knew or received freight prepaid; for those sending freight, 17.2% to 20.4% never knew or sent freight prepaid (Table A-18).

E. Conclusions. Prior to passage of the Motor Carrier Act of 1980, there were fears that carriers would abandon service to small communities. The evidence shows, however, that service is largely unchanged and that where it has changed, the results generally show improvement rather than deterioration.

SMALL COMMUNITY RATES

While it was discovered that small community service levels had not been harmed by the Motor Carrier Act, the possibility that small community shippers and receivers were given disproportionate rate increases remained. Complete investigation of the small community question demanded some effort to resolve the rate issue even though there was no specific legislative requirement to do so.

Acquiring good quality rate information proved difficult. Several alternatives were examined and rejected:

- The shipper questionnaire could have included a rate question but information would have been of doubtful validity since, unlike the other questions, precise numerical responses would have been required.
- Direct examination of tariffs would not work because of the large number of tariffs and the impossibility of determining the relative importance of each without knowing the amount of freight actually moving.
- A survey of carrier freight bills was a possible technique but would have been expensive and would have presented difficulties in achieving an acceptably representative sample of carriers.

The only available source of adequate price information was the Continuous Traffic Survey (CTS) that is conducted by each of the nine major motor carrier rate bureaus. Unfortunately the Commission has access only to earlier CTS data for 1976 and 1977. However, during liaison activities with the Motor Carrier Ratemaking Study Commission it was discovered that the Study Commission also had a similar interest in small community rates and had access to the necessary CTS data. An informal arrangement was undertaken in which the Commission provided technical economic assistance to the Study Commission and the Study Commission undertook the actual computer analysis. Under this arrangement both Commissions were able to improve the quality of their studies and the confidentiality of the CTS data was maintained since no ICC personnel had access to the CTS data. We wish to emphasize, however, that all conclusions and analysis represent the views of the Interstate Commerce Commission and not necessarily those of the Motor Carrier Ratemaking Study Commission.

Definition of Small Community in Rate Regressions

Origins and destinations were divided into categories based on the 1970 Beale's Code.[1] The smallest categories, 8 and 9, are counties where the largest town has a population of less than

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[1] A standard method of categorizing counties by their population, urban population, and remoteness from metropolitan areas. See Appendicies D and E for detailed description.

2,500 people. These categories are similar to those in other parts of this study. An additional comparison was made possible by the fact that Beale's codes for mid-size and smaller counties are further divided by remoteness. Beale's Codes 6 & 8 are for small counties that are contiguous to metropolitan areas, whereas Codes 7 & 9 are for those that are not.

Analysis

Regressions were run to estimate shipment revenue as a function of the weight of the shipment and the distance it was moved. Regression analyses were performed on large counties (Beale's 1 through 5 with urban population from 20,000 to 1 million), smaller counties (Beale's 6 and 7 with urban population from 2,500 to 19,999), and very small counties (Beale's 8 and 9 with urban population of fewer than 2,500) for the years 1976 and 1980. More detailed information on these regressions can be found in Appendix H. Shipper cost of moving a typical shipment to or from a smaller (Beale's 6 or 7) or very small (Beales 8 & 9) community was compared to the cost of a similar movement to or from a larger one (Beale's 1 through 5). Similar comparisons were made between small contiguous and non-contiguous counties and larger ones.

The year 1976 was chosen to represent the pre-regulatory reform era whereas 1980 was a much more competitive environment. Originally, it was planned to use 1981 data as well since this would give more time for the Act to take effect. Unfortunately, as of this writing, the 1981 data are not yet available. However, 1980 data are an acceptable substitute, since regulatory reform of the trucking industry has been a continuous process that started in the late 1970's. Indeed there was ample opportunity for considerable impact on small communities by 1980. Our shipper questionnaire and complaint file analysis confirms that, in those areas, the impacts of regulatory reform show up in 1980 data. Regressions were run on a 4% sample of the entire CTS file as this was large enough to give a statistically meaningful result. In the event that the Study Commission should perform additional analysis on these years or on 1981 data, results will be analyzed and forwarded as a brief addendum. We do not expect any important conclusions to be altered by this new evidence.

Results

This analysis showed that the shipper's cost of a typical shipment,[2/] in 1976 was not significatly affected by the population or remoteness of the origin or destination. Table 8 shows the effect of community size on rates for a typical shipment. Table 9, by grouping Beales's 6 and 8 (communities contiguous to urban areas) together and similarly grouping Beales's 7 and 9 (not contiguous), examines the effect of remoteness on rates to small communities that have similar populations.

[2/] See Appendix H.

TABLE 8

Comparison of Estimated Revenue For Typical Shipments By Size of Origin and Destination 1976 and 1980

	Larger Beale's 1, 2, 3, 4, & 5		Smaller Beale's 6, 7		Smallest Beale's 8, 9	
Year	Origin	Destination	Origin	Destination	Origin	Destination
1980	$54.92	$54.98	$53.20	$54.11	$49.19	$50.96
1976	37.12	37.24	37.95	35.82	36.24	38.57

TABLE 9

Comparison of Estimated Revenue For Typical Shipments By Remoteness From Urban Areas of Origin and Destination in 1976 and 1980

	Large Beale's 1, 2, 3, 4, & 5		Small Contiguous Beale's 6 & 8		Small Noncontigous Beale's 7 & 9	
Year	Origin	Destination	Origin	Destination	Origin	Destination
1980	$54.92	$54.98	$53.72	$55.53	$52.50	$52.64
1976	37.12	37.24	38.69	36.33	37.15	36.13

In 1976, the eight small community revenue estimates are about equal to the corresponding large community estimates except two for which there are small, but statistically significant differences. Rates on a typical shipment destined to a Beale's 6 & 7 county were $1.42 lower than those on an otherwise similar shipment destined to a larger community ($35.82 vs $37.24). Similarly rates on shipments originating in small counties contiguous to urban areas were $1.57 higher than for freight originating in urban counties ($38.69 vs $37.12).

By 1980, the rate structure had shifted slightly to favor smaller more remote communities. All but one of the eight revenue estimates for small community shipments was lower than the corresponding estimate for larger communities and four were statistically significantly lower. Standard shipments originating in smaller (Beales' 6 and 7), smallest (Beales' 8 & 9), and non-contiguous small (Beales' 7 and 9) counties were $1.62, $5.73, and $2.42 cheaper respectively than shipments originating in larger counties (Beales' 1, 2, 3, 4, and 5). Similarly, a standard shipment destined to a noncontinguous small community was a statistically significant $2.34 cheaper than a similar shipment to a larger community. The largest dollar differences occurred for the smallest communities (Beale's 8 & 9), but because of the smaller number of such communities these results must be interperted cautiously. For example, the $5.73 difference for shipments originating in the smallest counties was significant, but the $4.02 difference for shipments destined to those same locations just missed the cutoff for statistical significance. The proper interpretation of these results would place emphasis on the fact that, in 1980, small community rates in 7 out of 8 cases were lower than rates to and from larger communities rather than on the magnitude of the differences.

Conclusions

During the more heavily regulated period, typified by 1976, rates varied little by size of community. This is reflected by the fact that of the eight small community shipment revenue estimates only one was significantly higher and one significantly lower than the corresponding estimate for large community shipment revenues. While this could have been the result of regulatory attempts to maintain uniformity, analysis and subsequent ratemaking behavior suggest that it reflected the market equilibrium at that time. A variety of factors are likely to influence that equilibrium and many are different for small and large communities. Small community markets are likely to be less competitive and have lower traffic density than larger markets. Both of these factors would tend to produce small community rates that are higher than other rates. However, motor carriers have had considerable success overcoming the problem of low traffic density and there may be small community benefits to offset potential disadvantages. These include reduced congestion, lower overhead, and the potential for more favorable labor agreements.3/ Apparently in 1976 positive and negative factors roughly offset each other.

By 1980, the market equilibrium had shifted. All markets had become more competitive and regulatory restraints that increase cost had been largely eliminated. While all categories of markets benefited from the changes, small community markets may have benefited by a slightly greater amount simply because they had more regulatory problems to begin with.

3/ An Evaluation of Charges that Regulatory Reform will Degrade Small Community Motor Carrier Service. March 1980, Office of Policy Analysis, Interstate Commerce Commission.

Entry has been an important factor increasing competition in all parts of the industry, but small communities are unique in that, until recently, shippers often had access to a very small number of carriers. While no direct evidence is available for 1976, the service questionnaire (Table A-5) shows that between 1980 (Phase 1) and 1981 (Phase 3) the number of shippers who used only one for-hire firm (other than parcel services) dropped from 30% to 19%. We believe this is a continuation of a trend that started with the easing of entry barriers in the late 1970's and that the number of shippers with only one available carrier was even greater in 1976. Needless to say, adding one new carrier to a monopoly market could have a dramatic effect on the competitive equilibrium.

By 1980, reduced restrictions on entry and exit probably also had had a beneficial effect on carrier cost. Easier entry made it possible for carriers to eliminate gaps in their authority. Expanded authority made it easier for them to assemble a large enough point list to acquire adequate loads, reducing the cost penalties associated with low traffic density. On the other hand, Commission and Congressional actions encouraging pooling and convenience interlining made it unnecessary for carriers to provide service directly when freight demand did not warrant it. This too would help minimize the problems associated with low traffic density. In short, regulatory reform made it possible for carriers who wished to serve small communities to do so more efficiently and for those who did not wish to serve them to be replaced by more efficient carriers.

Results of this section of the study suggest that the balance between small community problems and advantages has shifted somewhat to favor the advantages. As a result inflation in small community rates has been held to slightly less than for rates to and from larger communities.

COMMON CARRIER OBLIGATION

Congress mandated that this report include an analysis of the common carrier obligation to provide service to small communities and an assessment of whether the Commission is enforcing such an obligation. Congressional concern for the status of the common carrier obligation is understandable in light of the debate that preceded the Motor Carrier Act. Opponents of deregulation argued that deregulation would terminate common carrier service obligations and eventually lead to either the cessation or deterioration of for-hire motor carrier service to small communities. However, evidence since passage of the Motor Carrier Act, from this and other studies of service to small communities, indicates that shippers are satisfied with the availability and quality of service to these areas.

Background of the Common Carrier Obligation

The Interstate Commerce Act, 49 U.S.C. 11101, requires that a common carrier providing service subject to the Commission's jurisdiction shall provide such service on reasonable request. The offering of service "upon reasonable request" has been interpreted by the Commission to mean that service must be offered on a nondiscriminatory basis to the full extent of the carrier's certificate authority but only up to the limit of the carrier's equipment. The term is not explicity defined in the Act itself.

Common law has long recognized the principle that a common carrier owes a duty to the public to carry for all to the extent of its capacity at a reasonable charge and with impartiality. This principle was incorporated into the Interstate Commerce Act in 1887 and is the foundation of the requirement that all regulated carriers provide service on reasonable request.

Early in the history of motor carrier regulation, the Commission spoke broadly of the duty of the motor common carrier, "to furnish service at his tariff rates, to the limit of his capacity to do so, upon reasonable demand." The Motor Carrier Act of 1935 generally made it illegal for any person to operate as a motor common carrier of property absent a certificate authorizing that person to conduct such operations. Historically, the grant of authority in a certificate was confined to the service a carrier actually proposed to operate immediately. As a result, the common law concept of the common carrier obligation grew to be associated with the operations authorized in the certificates, but the Commission has never attempted to ensure that a carrier serve every point in its authority.

In recent years, however, the Commission has permitted carriers to fulfill their common carrier obligation by interlining instead of providing direct service. In 1971 the Commission changed its policy regarding the common carrier service obligation by allowing the convenience interlining[4] and pooling arrangements as substitutes for direct service to small communities. In this and subsequent cases, we have considered interlining to authorized points as being consistent with the common carrier duty to serve if done under an approved pooling agreement. In 1979, the Commission reaffirmed this position by issuing a policy statement which concluded that motor carrier convenience interlining, intermodal substituted service and pooling arrangements were effective ways to conserve fuel and that operations under these arrangements were fast, economical, and efficient. The benefits of such arrangements accrue to shippers and carriers alike. Shippers receive adequate service at reasonable rates and carriers are able to serve rural and isolated locations more efficiently.

The Motor Carrier Act of 1980

The Motor Carrier Act of 1980 has changed significantly the regulatory framework under which the concept of common carrier obligation must operate. Section 20 affirmed the Commission's liberal approach to pooling agreements. More importantly, the traditional Commission responsibility has been changed to place greater emphasis on competition and potential competition as the principal regulatory device. In response to this new environment, the Commission is re-examining its interpretation of common carrier obligations (Ex Parte No. MC-77 (Sub-No. 3), Elimination of Certificate As the Measure of Holding Out).

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[4] Convenience interlining allows a carrier, through a simple tariff publication, to provide through service to its authorized points by interlining at the gateways or interchange points where joint through routes are applicable.

In the Notice of Proposed Rulemaking in this proceeding, the Commission stated as follows: "We believe that under the Motor Carrier Act of 1980 these certificates are no longer a proper measure of the extent to which a carrier must hold its services out to the public. We would continue to require motor common carriers of property to provide service on reasonable request in a nondiscriminatory fashion, but we would revise our regulations to allow these carriers to offer less than the carrier's full certificated authority."

The Commission is considering several alternative means of defining the common carrier obligation. One method would require each carrier to announce formally what service it proposes to offer through the filing of tariffs. Another would require carriers to declare the markets they are committed to serve. Also under consideration is the possibility of allowing carriers to declare their services by informal means such as advertising.

Comments have been received and an oral argument was held to permit the parties to address the following issues:

(1) Does the Motor Carrier Act of 1980 require a reinterpretation of the traditional concept of the common carrier obligation?

(2) What is (or what should be) the relationship between the common carrier obligation and the Commission's licensing policy?

(3) How would interested parties be affected by the various interpretations of the common carrier obligation?

(4) To what extent might the various interpretations involve the potential for discrimination among shippers?

(5) What enforcement role should the Commission play with respect to the common carrier obligation?

(6) What practical problems are there with the enforcement of the common carrier obligation under any of the proposed alternatives?

(7) What, if any, administrative actions might be appropriate to promote service consistent with the common carrier obligation?

A decision is presently being prepared in Ex Parte No. MC-77 (Sub-No. 3) and it is anticipated that the Commission will consider this matter in the very near future. The Commission's views with regard to the appropriate ICC role in enforcing the common carrier obligation will be set forth in detail in that decision.

Conclusion

The Motor Carrier Act has resulted, as many predicted, in increased price/service options and good levels of service. Increased common carrier service is available to the public; today almost 20,000 carriers provide that service. Complaint levels have substantially declined since enactment of the Motor Carrier Act. In addition, the downturn in the economy has resulted in a decline in tonnage, creating excess capacity in much of the motor carrier industry. Under these circumstances, considering the generally satisfactory service shippers have been receiving, there has been no need to expand our limited resources on enforcement programs relating to motor carrier service obligations.

However, the Commission does carefully monitor service levels. Our field personnel evaluate the carriers and their performance. The Commission also has in place a program designed to assist shippers who complain that service is not available or that service is being improperly denied. In such cases, the Commission staff contacts the carrier involved, or any carrier holding appropriate authority, and explains the situation. Almost without fail, the shipper's problem is resolved satisfactorily. The purpose of the common carrier obligation was to ensure availability of service to shippers on a non-discriminatory basis. Relaxation of regulation and greater reliance on competition as a regulatory device has lessened the need to rely on the strict interpretation of the common carrier obligation.

SMALL COMMUNITY COMPLAINT STUDY

This section of the report discusses the results of an investigation into the Interstate Commerce Commission's complaint file. The purpose of the investigation was to determine whether there was a change in the number and types of complaints concerning small community service since passage of the Motor Carrier Act of 1980. Consistent with the language of the Motor Carrier Act (Section 28), examination of complaints focused on communities with populations of less than 5000.

The Complaint File

The Commission's complaint handling system is a consumer protection device designed to help shippers and carriers resolve problems they are having with regulated surface transportation. The complaint system allows people to write or phone in their complaints. Upon receiving a complaint, the Commission determines whether it has jurisdiction over the complaint, and then takes appropriate action to address the problem.

The Commission enters information about each complaint into a computer file. A complaint record contains the name and address of the complainant (the person or organization making the complaint) and the respondent (the person or organization about whom the complaint is made -- usually a carrier), a description of the complaint, and a description of how the Commission handled the problem.[6] Appendix F shows the complaint form and Appendix G describes complaint reasons. The information about all complaints is maintained at headquaters in the computer file described above. This total file was used to sample complaints.

In 1980, the Commission received approximately 21,000 complaints about property motor carriers and freight forwarders.[7] In 1981, approximately 14,395 complaints were received. For 1982, based on the current rate of complaints, we anticipate between 10,000 and 11,000 complaints for freight forwarders and property carriers. The vast majority of these complaints (93 to 95 percent) were registered against property carriers, and complaints mostly concerned damage claims. There were, however, complaints about nearly every facet of service.

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[6] It should be noted that beginning in February of 1982, the Commission decentralized complaint handling procedures. Prior to that time complaints were received at Commission headquarters on toll free "hot" lines. Beginning in February, however, complaints were directly received by the appropriate regional office. If there had been significant changes in the number or types of complaints received after this date, this new procedure may have caused or contributed to these changes. However, since there was no perceptible difference before and after the change in procedure, we assume that it had no effect on the complaint data.

[7] Property motor carriers excludes household goods carriers.

Study Methodology

The large volume of complaints that the Commission receives indicates that examining the complaint file is a reasonable way to monitor service levels. The complaint file has been well received by the public, and has been in use for several years prior to passage of the Motor Carrier Act of 1980.

Due to the enormous volume of complaints the Commission receives, it was impossible to measure directly the number of small community complaints.[8] Although one complaint reason (#48 on the complaint form) does explicitly concern service to small communities, the Commission typically records a small number of these complaints (61 in 1980, 0 in the nine months examined in 1981, and 3 for the seven months examined in 1982). This low number strongly suggested that many other complaints also dealt with small community service but were not recorded as such.

A two-step process was used to estimate small community complaint levels. The first step was to look at the total number of complaints, for communities of all sizes, the Commission received between June 1979 and July 1982. This step showed how overall complaint levels were changing on a month-to-month basis and provided a frame of reference for examining small community complaints. The second step was to draw a sample to estimate the proportion of complaints concerning small community service. Given the total number of complaints and the proportion of small community complaints, estimating the number of small community complaints was straightforward.

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[8] Also, no attempt was made to use the complaint file to determine the overall level of service quality since there is no way of knowing if the absolute level of complaints for the total number of shipments is good or bad.

A complaint was classified as a small community complaint if the address of the complainant was in a community with a population of 5,000 or less.

Relying on the complainant's address did, however, introduce measurement difficulties. Complaint records do not include the origin and destination of the relevant movement, but merely list the addresses of the involved parties. A complainant with a large community address could have had a problem with a shipment to or from a small community, but the complaint would not be recorded as a small community complaint. Conversely, a complainant with a small community address could have had a problem concerning a movement to and from communities not within the scope of the study, and the study would pick up this type of complaint.

A final step in this process was to compare reasons for complaints according to size of community. Small community complaint reasons were compared with complaint reasons in communities of all sizes. This showed whether small community complaints were of a different type than larger community complaints and perhaps deserving of special attention.

Trends in the Number of Complaints For All Communities

As shown in Table 10, monthly complaint levels fluctuated during the study period (June 1979 to July 1982). However, motor carrier complaint levels have been in a downward trend. The mean level of complaints in 1979 and 1980 were approximately the same. In 1981, the mean number of complaints was 37 percent below the 1980 level. Thus far in 1982, complaints are 36 percent lower than the first seven months of 1981 and 62 percent below the complaint levels for the first seven months of 1980.

In addition, there was a significant reduction in the mean level of complaints after passage of the Motor Carrier Act. From June 1979 until July 1980, the Commission averaged 1865 complaints per month. After the Act, from August 1980 until July 1982, there were only 1075 complaints per month.

Changes in Small Community Complaints

Small community complaints are also on a downward trend although they have not fallen as dramatically as complaints in larger communities. As can be seen in Table 11 and Chart 1, small community complaints ranged from 228 to 350 for selected months prior to the Act. The mean number of complaints per month during this period was 296. For study months after the Act, however, small community complaints were greatly reduced. The mean number of small community complaints subsequent to the Act was 142, with a range from 84 to 198.

The trend in the number of complaints filed each month with the Commission indicates that consumers of truck service in small

Chart 1
Complaint Level
Motor Carriers of Property and Freight Forwarders
July 1979 - July 1982

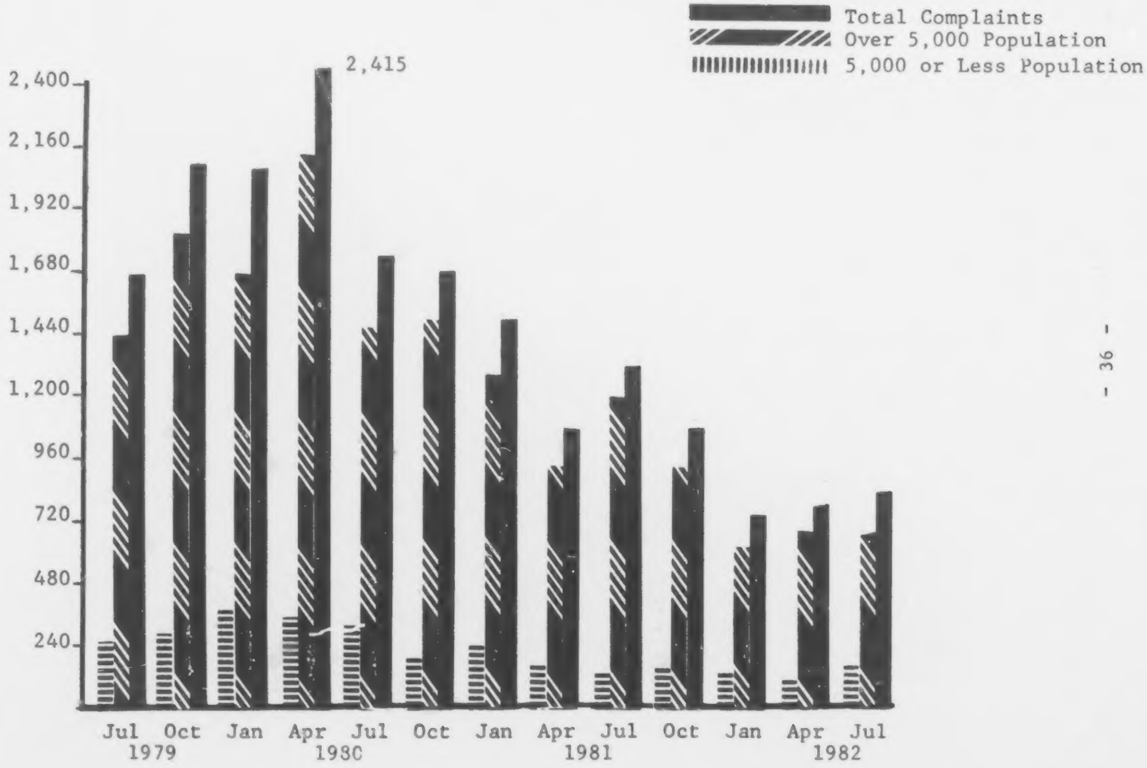

Table 10

Monthly Complaint Levels
Total of Property and Freight Forwarder Complaints
June 1979 - July 1982

Month	Year			
	1979	1980	1981	1982
January		2030	1461	729
February		1909	1145	693
March		2149	1315	872
April		2415	1038	754
May		1960	966	669
June	1397	1755	1112	753
July	1646	1720	1278	822
August	1937	1675	1006	
September	1285	1625	1017	
October	2071	1648	1039	
November	2087	1161	986	
December	1744	1118	906	

Note: Data before 1979 was not available. Mean level of complaints:
1979 - 1738 (for 7 months)
1980 - 1764
1981 - 1106
1982 - 756 (for 7 months)

The mean level of complaints before and after the MCA was 1865 and 1075 respectively.

as well as large communities are more satisfied with this quality of service they are receiving after the Motor Carrier Act than before the Act.

Also, people in small communities appear to complain about the same types of problems as their larger community counterparts. Tables 12 and 13 summarize complaints according to the nature of the complaint and reason for the complaint. The distribution of complaints according to nature shows that claims was the predominant category of complaints for both large and small communities. Claims related complaints accounted for approximately 41 percent of all small community complaints and 48 percent of all larger community complaints. Rate and service complaints accounted for 14 and 15 percent respectively of all complaints for small communities. For larger communities, these categories made up 21 and 11 percent of all complaints.

Table 11

Total Complaints and Small Community Complaints
Selected Months
July 1979 - July 1982

Date	Total Complaints	Small Community Complaints (Population 5,000 or under)	Complaints from Comments with Populations Larger than 5,000
July 1979	1646	228	1418
October 1979	2071	284	1787
January 1980	2030	350	1680
April 1980	2415	327	2088
July 1980	1720	289	1431
October 1980	1648	166	1482
January 1981	1461	198	1263
April 1981	1038	143	894
July 1981	1278	120	1158
October 1981	1039	143	895
January 1982	729	118	611
April 1982	754	84	670
July 1982	822	160	662

Table 12

Complaints Categorized by Nature of Complaints

Nature	Small Communities	Large Communities	Total
Claims - Loss/Dam	39.6%	41.1%	40.9%
Claims - Incv./Delay	----	0.2%	0.2%
Claims - Other	1.1%	7.0%	6.2%
Rates & Charges	14.0%	21.4%	20.3%
Service	14.7%	11.3%	11.8%
Other	30.5%	18.9%	20.6%

Table 13

Small Community Complaint Reasons vs. Top Five Complaint Reasons For All Communities 4/81 - 7/82

Small Communities N = 257 Reason			All Communities N = 1975 Reason		
1.	Settlement	20.2%	1.	Settlement	20.6%
2.	Other	15.9%	2.	Processing Claims	18.7%
3.	Processing Claims	14.3%	3.	Overcharge	16.9%
4.	Delivery	9.1%	4.	Other	12.1%
5.	Overcharge	8.7%	5.	Delivery	6.4%
		68.2%			74.7%

Table 13 compares the five most frequent complaint reasons for small and large communities. Settlement problems was the number one complaint for both large and small communities. Other reasons for complaints include processing claims, delivery and overcharges. It is significant that not only do small community complaints concern the same types of problems as larger community complaints, but also complaint reasons appear in about the same proportions in small and large communities. In other words, there does not appear to be service problems peculiar to small communities.

Conclusion

To the extent that complaint levels reflect service levels, there is no evidence that regulatory reform has led to service deterioration in small communities. The total number of complaints that the Commission received for all sizes of communities for property motor carriers and freight forwarders[9] has been in a downward trend since passage of the Motor Carrier Act. In a sample of pre and post Act complaints, there was a decline in the absolute number of small community and large community complaints. Also small community shippers and receivers complain about the same types of problems as their larger community counterparts. Significantly, there are no indications from the complaint file that carriers are abandoning service to small communities.

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[9] Categories not considered in this study include private carriers, passenger carriers, exempt carriers, agricultural cooperatives and household goods carriers.

APPENDICIES

Appendix A

The following tables contain data discussed in "Results and Analysis of the Shipper Survey." It should be noted that the tables correspond to questions on the survey form mailed to each firm (questionnaire is in Appendix B).

When reading the tables, the following conditions should be noted:

1. Tables corresponding to Questions 4-9 on the survey form strictly address for-hire trucking.
2. Totals for number of shippers may vary from question to question, depending upon item non-response and whether the question includes information regarding private carriage.
3. All figures in each table reflect weighted responses, except TABLES A-8 where an unweighted count of respondents was used.
4. "Shippers" refers to a firm, not specifically a sender of freight; any shipper, therefore, may receive freight, send freight, or both.

METHODOLOGY FOR CALCULATING RESPONSES

The sample of communities was divided into two subsamples by taking every other community in each replicate and assigning it at random to either Group 1 or Group 2. Group 1 contains 96 communities and Group 2 contains 97 communities. Questionnaires were mailed to Group 1 in January 1981. All respondents from this first mailing were asked to complete the questionnaire again in July 1981. The results of the first mailing are shown in column 1 labeled Phase 1, Group 1. The results of the second mailing to this first group are shown in column 3 labeled Phase 2, Group 1. Since all who responded to the first mailing did not return the second mailing, the results from the January mailing were recalculated using only those questionnaires that have a corresponding response in the second mailing. This recalculation is shown in column 2 (in parentheses after column 1).

Questionnaires were mailed to Group 2 in July 1981. All respondents in Group 2 from the first mailing were asked to complete the questionnaire again in January 1982. The results of the first mailing to Group 2 are shown in column 4 labeled Phase 2, Group 2. The results of the second mailing to this second group are shown in column 7 labeled Phase 3, Group 2. Since all who responded to the first mailing to Group 2 did not return the second mailing, the results of the first mailing to Group 2 were recalculated using only those questionnaires that have a corresponding response in the second mailing. This recalculation is shown in column 5 (in parentheses after column 4). The second mailing to Group 1 and the first mailing to Group 2 was in July 1981. All respondents to the July 1981 mailing (both Group 1 and Group 2) were combined and reported in column 6 labeled Phase 2, Groups 1 and 2.

TABLE A-1
(Questions 1 and 3)
USE OF PRIVATE AND FOR-HIRE TRUCK SERVICE

Truck Service Type	Phase 1	------------------Phase 2	------------	------------	Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Private only					
Receive only	2.2(2.1)	3.0	4.3(1.9)	3.5	5.6
Receive and send	1.1(0.7)	0.4	0.8(1.1)	0.5	1.2
Receive or send	3.3(2.8)	3.4	5.1(3.1)	4.0	6.8
For-hire only					
Receive only	12.8(10.5)	10.1	9.3(9.8)	9.8	12.9
Receive and send	12.6(13.8)	16.8	14.5(10.3)	16.0	11.7
Receive or send	25.4(24.3)	26.9	23.8(20.1)	25.8	24.5
Private and for-hire					
Receive only	24.3(23.2)	19.5	25.3(26.2)	21.5	22.5
Receive and send	47.1(49.7)	50.2	45.8(50.7)	48.6	46.2
Receive or send	71.3(72.8)	69.7	71.0(76.9)	70.2	68.7

TABLE A-2
(Question 2 - Inbound)
TYPES OF TRANSPORTATION USED BY SHIPPER SAMPLE

Types of Transportation	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
UPS					
5,000 - 15,000	95.6(95.4)	92.7	90.7(92.7)	92.0	83.8
Under 5,000	93.8(94.8)	93.0	95.6(96.7)	93.9	93.7
Total	94.5(95.0)	92.9	93.6(95.1)	93.2	89.6
General freight					
5,000 - 15,000	74.5(73.4)	68.8	70.5(74.0)	69.4	71.5
Under 5,000	75.4(77.6)	70.0	63.3(60.7)	67.6	62.5
Total	75.0(76.0)	69.5	66.2(66.1)	68.3	66.2
Private Truck					
5,000 - 15,000	61.3(62.4)	67.9	70.3(69.6)	68.8	70.3
Under 5,000	75.5(75.8)	74.4	70.7(74.9)	73.1	62.5
Total	70.2(70.6)	71.9	70.6(72.7)	71.4	65.7
Parcel Post					
5,000 - 15,000	65.7(67.0)	54.1	47.9(52.2)	51.9	56.9
Under 5,000	62.8(65.0)	69.0	58.9(59.6)	65.5	61.5
Total	63.9(65.8)	63.3	54.5(56.6)	60.2	59.6
Bus Package					
5,000 - 15,000	35.8(35.8)	24.8	40.1(44.8)	30.3	47.1
Under 5,000	30.4(32.1)	30.0	20.8(22.6)	26.8	23.6
Total	32.4(33.5)	28.0	28.4(31.7)	28.1	33.2
Air Freight					
5,000 - 15,000	19.0(20.2)	16.5	11.3(15.7)	14.6	13.1
Under 5,000	15.5(16.4)	14.2	12.5(13.9)	13.6	5.5
Total	16.8(17.9)	15.1	12.0(14.6)	14.0	8.6
Other Parcel					
5,000 - 15,000	15.3(16.5)	11.0	11.6(14.0)	11.2	9.5
Under 5,000	11.6(13.6)	14.5	9.2(12.1)	12.6	9.0
Total	13.0(14.7)	13.1	10.2(12.9)	12.1	9.2
Railroad					
5,000 - 15,000	7.3(8.3)	7.3	5.0(6.2)	6.5	6.4
Under 5,000	8.2(6.8)	6.0	4.4(5.2)	5.4	4.9
Total	7.9(7.4)	6.5	4.6(5.6)	5.8	5.5
Other					
5,000 - 15,000	0.7(0.9)	0.9	0.5(0.4)	0.8	0.0
Under 5,000	3.1(2.9)	1.7	3.5(2.5)	2.4	0.8
Total	2.2(2.1)	1.4	2.3(1.6)	1.7	0.5

TABLE A-2
(Question 2 - Outbound)
TYPES OF TRANSPORTATION USED BY SHIPPING SAMPLE

Types of Transportation	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
UPS					
5,000 - 15,000	40.9(43.1)	39.4	46.2(53.8)	41.9	47.6
Under 5,000	34.0(36.8)	39.7	36.4(36.3)	38.6	31.1
Total	36.6(39.3)	39.6	40.3(43.4)	39.9	37.9
General freight					
5,000 - 15,000	28.5(30.3)	28.4	25.8(28.7)	27.5	30.6
Under 5,000	24.1(28.3)	21.6	17.4(19.4)	20.1	20.3
Total	25.7(29.1)	24.3	20.7(23.2)	23.0	24.5
Private Truck					
5,000 - 15,000	29.2(33.0)	37.6	35.6(39.6)	36.7	43.0
Under 5,000	39.2(39.7)	36.6	31.8(34.8)	34.9	28.0
Total	35.5(37.1)	37.0	33.3(36.7)	35.7	34.1
Parcel Post					
5,000 - 15,000	39.4(45.0)	36.7	39.0(41.1)	37.5	42.3
Under 5,000	37.5(40.9)	42.3	37.8(36.1)	40.7	39.3
Total	38.2(42.5)	40.2	38.2(38.1)	39.5	40.5
Bus Package					
5,000 - 15,000	11.7(11.9)	11.9	23.3(26.7)	16.0	24.6
Under 5,000	9.8(10.6)	11.6	7.8(9.2)	10.3	3.8
Total	10.5(11.1)	11.7	13.9(16.3)	12.5	12.3
Air Freight					
5,000 - 15,000	8.8(9.2)	7.3	3.7(5.2)	6.0	4.9
Under 5,000	5.3(7.0)	5.8	4.2(4.4)	5.2	4.9
Total	6.6(7.8)	6.4	4.0(4.7)	5.5	4.9
Other Parcel					
5,000 - 15,000	7.3(8.3)	4.6	7.2(10.3)	5.5	6.3
Under 5,000	3.5(4.0)	6.4	3.1(4.7)	5.2	5.5
Total	4.9(5.7)	5.7	4.7(7.0)	5.3	5.8
Railroad					
5,000 - 15,000	2.2(2.8)	3.7	0.9(0.7)	2.7	2.8
Under 5,000	1.3(1.2)	1.2	2.3(2.3)	1.6	1.6
Total	1.6(1.8)	2.1	1.8(1.6)	2.0	2.1
Other					
5,000 - 15,000	1.5(1.8)	0.0	0.4(0.3)	0.1	0.0
Under 5,000	0.4(0.6)	1.2	1.7(2.1)	1.3	0.1
Total	0.8(1.1)	0.7	1.1(1.4)	0.9	0.0

TABLE A-3
(Question 3 - Inbound)
DISTRIBUTION OF SHIPMENT ACTIVITY [a]

Number of Shipments	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
<1/month					
5,000 - 15,000	3.6(3.7)	3.8	4.6(2.3)	4.1	2.4
Under 5,000	3.5(3.5)	2.4	3.3(3.1)	2.7	7.1
Total	3.6(3.6)	2.9	3.8(2.8)	3.2	5.2
<1/week					
5,000 - 15,000	18.2(13.8)	16.2	17.1(18.6)	16.5	19.0
Under 5,000	22.0(20.7)	18.8	20.8(20.7)	19.5	19.2
Total	20.6(18.0)	17.8	19.3(19.9)	18.4	19.1
1-3/week					
5,000 - 15,000	24.1(26.6)	24.8	19.8(19.6)	23.0	22.3
Under 5,000	25.6(23.9)	26.1	28.9(31.0)	27.1	34.0
Total	25.0(25.0)	25.6	25.4(26.4)	25.5	29.2
4-5/week					
5,000 - 15,000	15.3(14.7)	20.0	20.7(26.4)	20.3	19.3
Under 5,000	17.6(18.7)	16.6	22.0(18.1)	18.5	11.7
Total	16.8(17.1)	17.9	21.5(21.4)	19.2	14.8
6-10/week					
5,000 - 15,000	17.5(19.3)	18.1	20.1(17.6)	18.8	19.2
Under 5,000	15.4(18.5)	18.4	12.1(12.9)	16.2	15.3
Total	16.2(18.8)	18.3	15.2(14.8)	17.2	16.9
11-15/week					
5,000 - 15,000	4.4(3.7)	5.7	5.8(3.9)	5.7	7.7
Under 5,000	4.4(3.5)	5.3	4.1(3.1)	4.9	3.0
Total	4.4(3.6)	5.5	4.8(3.4)	5.2	4.9
16-20/week					
5,000 - 15,000	7.3(9.2)	4.[illegible]	4.9(4.9)	4.8	2.7
Under 5,000	3.5(3.5)	4.4	2.6(3.9)	3.8	2.3
Total	4.9(5.7)	4.6	3.5(4.3)	4.2	2.5
21-50/week					
5,000 - 15,000	6.5(6.4)	1.9	6.0(6.0)	3.4	6.2
Under 5,000	6.6(6.4)	4.7	5.1(6.3)	4.9	6.7
Total	6.6(6.4)	3.7	5.4(6.2)	4.3	6.5
>50/week					
5,000 - 15,000	2.9(2.8)	4.8	1.0(0.7)	3.4	1.2
Under 5,000	1.5(1.3)	3.2	1.0(0.8)	2.4	0.7
Total	2.0(1.9)	3.8	1.0(0.8)	2.8	0.9

TABLE A-3
(Question 3 - Outbound)
DISTRIBUTION OF SHIPMENT ACTIVITY^a

Number of Shipments	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
<1/month					
5,000 - 15,000	7.1(5.6)	11.1	12.1(10.0)	11.5	6.6
Under 5,000	7.5(7.6)	8.9	9.5(7.3)	9.1	4.7
Total	7.4(6.8)	9.8	10.6(8.6)	10.0	5.7
<1/week					
5,000 - 15,000	28.6(27.8)	29.2	27.6(23.4)	28.6	31.8
Under 5,000	39.5(39.0)	32.2	35.9(36.8)	33.4	28.2
Total	35.4(34.5)	31.0	32.4(30.3)	31.5	30.0
1-3/week					
5,000 - 15,000	23.8(23.6)	13.9	27.9(34.0)	18.7	18.1
Under 5,000	23.6(27.2)	28.8	18.9(16.7)	25.6	27.7
Total	23.7(25.8)	23.0	22.7(25.1)	22.9	22.8
4-5/week					
5,000 - 15,000	7.1(6.9)	11.1	8.7(10.8)	10.3	20.2
Under 5,000	8.7(7.3)	5.3	14.4(15.5)	8.2	15.6
Total	8.1(7.2)	7.6	12.0(13.2)	9.1	17.9
6-10/week					
5,000 - 15,000	8.3(8.3)	6.9	6.5(8.4)	6.8	15.0
Under 5,000	8.3(6.9)	11.6	7.7(4.1)	10.3	12.1
Total	8.3(7.5)	9.8	7.2(6.2)	8.9	13.6
11-15/week					
5,000 - 15,000	7.1(8.3)	2.8	3.3(4.2)	2.9	0.8
Under 5,000	2.9(3.7)	2.1	5.2(8.6)	3.1	4.7
Total	4.5(5.5)	2.3	4.4(6.5)	3.0	2.8
16-20/week					
5,000 - 15,000	3.6(4.2)	5.6	5.9(1.0)	5.7	0.4
Under 5,000	1.5(1.8)	2.7	1.2(1.8)	2.2	2.4
Total	2.3(2.8)	3.8	3.2(1.4)	3.6	1.4
21-50/week					
5,000 - 15,000	8.3(8.3)	12.5	5.9(6.2)	10.2	6.0
Under 5,000	5.8(4.6)	4.5	3.8(3.8)	4.2	2.2
Total	6.8(6.1)	7.6	4.7(5.0)	6.6	4.1
>50/week					
5,000 - 15,000	6.0(6.9)	6.9	1.9(2.0)	5.2	1.2
Under 5,000	2.2(1.8)	4.0	3.5(5.3)	3.8	2.2
Total	3.6(3.9)	5.2	2.8(3.7)	4.4	1.7

TABLE A-4
(Question 9 - Inbound)
WEIGHT OF TRUCK SHIPMENTS BY FOR-HIRE TRUCK RECEIVED AT LEAST ONCE IN LAST 6 MONTHS [a]

Weight Category	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
1-49 lbs/shipment [b]					
5,000 - 15,000	85.7(86.7)	75.8	87.8(90.4)	80.1	84.1
Under 5,000	80.7(82.7)	78.2	85.2(89.0)	80.7	81.8
Total	82.6(84.3)	77.3	86.2(89.6)	80.4	82.7
50-499 lbs/shipment [b]					
5,000 - 15,000	54.9(51.4)	54.5	55.8(64.0)	55.0	68.1
Under 5,000	62.3(61.7)	54.3	53.6(58.2)	54.0	55.8
Total	59.5(57.7)	54.4	54.4(60.5)	54.4	60.6
500-9,999 lbs/shipment					
5,000 - 15,000	33.8(32.4)	28.3	30.4(34.7)	29.1	29.0
Under 5,000	39.9(39.0)	32.5	28.0(29.3)	30.9	24.1
Total	37.6(36.4)	30.9	29.0(31.5)	30.2	26.0
over 10,000 lbs/shipment					
5,000 - 15,000	18.0(18.1)	14.1	10.1(7.2)	12.7	4.6
Under 5,000	22.5(24.2)	18.9	14.2(12.5)	17.3	9.6
Total	20.8(21.8)	17.1	12.6(10.4)	15.5	7.7

[a] Totals to more than 100% since respondents were asked to check all applicable categories.

[b] It should be noted that the given number understates somewhat the number of firms who received shipments in these categories. This is based on the fact that some firms claimed to have used "UPS," "bus package," or "other parcel" at least once in the last 6 months, but they failed to check either of these shipment size categories.

TABLE A-4
(Question 9 - Outbound)
WEIGHT OF TRUCK SHIPMENTS BY FOR-HIRE TRUCK
RECEIVED AT LEAST ONCE IN LAST 6 MONTHS [a]

Weight Category	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
1-49 lbs/shipment [b]					
5,000 - 15,000	83.6(86.0)	83.6	89.3(92.9)	85.7	89.8
Under 5,000	81.0(80.7)	82.7	88.5(94.1)	84.5	86.0
Total	82.0(82.9)	83.1	88.9(93.5)	85.0	87.9
50-499 lbs/shipment [b]					
5,000 - 15,000	41.8(40.4)	34.4	37.8(38.4)	35.7	39.3
Under 5,000	38.9(42.2)	33.7	35.7(38.6)	34.3	38.2
Total	40.1(41.4)	34.0	36.7(38.5)	34.9	38.8
500-9,999 lbs/shipment					
5,000 - 15,000	19.4(19.3)	24.6	5.7(6.3)	17.5	5.2
Under 5,000	20.4(22.3)	15.9	17.3(21.9)	16.3	24.9
Total	20.0(21.0)	19.3	11.9(13.7)	16.8	15.1
over 10,000 lbs/shipment					
5,000 - 15,000	13.4(14.0)	11.5	7.1(8.2)	9.8	4.6
Under 5,000	19.7(20.2)	19.0	11.3(8.7)	16.7	8.9
Total	17.2(17.6)	16.1	9.3(8.4)	13.8	6.7

[a] Totals to more than 100% since respondents were asked to check all applicable categories.

[b] It should be noted that the given number understates somewhat the number of firms who received shipments to these categories. This is based on the fact that some firms claimed to have used "UPS," "bus package," or "other parcel" at least once in the last 6 months, but they failed to check either of these shipment size categories.

TABLE A-4M
(Question 9 - Inbound)
WEIGHT OF TRUCK SHIPMENTS BY FOR-HIRE TRUCK
CATEGORY USED MOST IN LAST 6 MONTHS

Weight Category	Phase 1 Group 1	Phase 2 Group 1	 Group 2	 Group 1&2	Phase 3 Group 2
1-49 lbs/shipment					
5,000 - 15,000	60.6(65.4)	61.2	66.1(65.5)	62.9	56.3
Under 5,000	46.9(46.8)	53.8	59.0(58.3)	55.7	67.1
Total	52.1(54.1)	56.8	61.7(61.1)	58.6	62.8
50-499 lbs/shipment					
5,000 - 15,000	18.2(16.3)	23.5	20.3(24.2)	22.4	39.9
Under 5,000	28.3(28.0)	23.6	26.0(28.9)	24.5	23.0
Total	24.5(23.4)	23.6	23.8(27.1)	23.7	29.8
500-9,999 lbs/shipment					
5,000 - 15,000	12.9(9.6)	10.2	9.0(7.6)	9.8	2.0
Under 5,000	13.7(13.1)	12.0	9.1(9.3)	10.9	7.2
Total	13.4(11.7)	11.3	9.0(8.6)	10.5	5.1
over 10,000 lbs/shipment					
5,000 - 15,000	8.3(8.7)	5.1	4.6(2.7)	4.9	1.8
Under 5,000	11.1(12.2)	10.5	6.0(3.5)	8.8	2.6
Total	10.0(10.8)	8.3	5.4(3.2)	7.3	2.3

TABLE A-4M
(Question 9 - Outbound)
WEIGHT OF TRUCK SHIPMENTS BY FOR-HIRE TRUCK
CATEGORY USED MOST IN LAST 6 MONTHS

Weight Category	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
1-49 lbs/shipment					
5,000 - 15,000	68.7(70.2)	71.2	77.9(79.4)	73.6	81.7
Under 5,000	65.0(62.9)	68.4	74.8(79.4)	70.4	77.5
Total	66.5(66.0)	69.5	76.2(79.4)	71.8	79.7
50-499 lbs/shipment					
5,000 - 15,000	14.9(14.0)	15.3	13.4(10.7)	14.6	13.9
Under 5,000	13.6(15.1)	16.5	12.2(11.3)	15.2	11.4
Total	14.1(14.6)	16.0	12.8(11.0)	14.9	12.7
500-9,999 lbs/shipment					
5,000 - 15,000	6.0(5.3)	5.1	3.2(3.5)	4.4	1.8
Under 5,000	9.7(10.4)	5.8	3.8(2.2)	5.1	4.9
Total	8.1(8.2)	5.5	3.5(2.9)	4.8	3.3
over 10,000 lbs/shipment					
5,000 - 15,000	10.4(10.5)	8.5	5.5(6.3)	7.4	2.5
Under 5,000	11.8(11.7)	9.2	9.2(7.1)	9.2	6.2
Total	11.2(11.2)	8.9	7.5(6.7)	8.5	4.3

TABLE A-5
(Question 10 - Private)
NUMBER OF DIFFERENT CARRIERS [a] USED BY EACH FIRM

Number of Carriers Used	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Zero [b]					
5,000 - 15,000	52.6(50.5)	49.5	39.6(37.7)	46.0	38.0
Under 5,000	40.6(39.6)	38.4	35.4(34.8)	37.3	35.6
Total	45.1(43.8)	42.7	37.1(36.0)	40.7	36.6
One					
5,000 - 15,000	19.7(21.1)	24.8	31.7(33.7)	27.3	35.3
Under 5,000	30.1(31.1)	28.6	30.8(34.3)	29.3	28.8
Total	26.2(27.2)	27.1	31.1(34.0)	28.5	31.4
Two					
5,000 - 15,000	5.8(3.7)	13.8	11.3(11.9)	12.9	12.3
Under 5,000	11.5(11.5)	14.1	10.2(12.3)	12.7	16.1
Total	9.4(8.5)	14.0	10.7(12.1)	12.8	14.5
Three					
5,000 - 15,000	10.9(11.9)	3.7	5.0(7.1)	4.1	0.4
Under 5,000	6.3(6.6)	7.3	11.2(7.8)	8.7	8.7
Total	8.0(8.6)	5.9	8.7(7.5)	6.9	5.3
Four					
5,000 - 15,000	4.4(5.5)	1.8	4.7(4.7)	2.9	7.1
Under 5,000	3.7(3.7)	3.0	6.0(7.2)	4.0	6.0
Total	4.0(4.4)	2.5	5.5(6.2)	3.6	6.5
Five					
5,000 - 15,000	3.6(4.6)	3.7	4.4(0.0)	3.9	4.5
Under 5,000	2.6(2.9)	3.5	3.0(1.7)	3.3	1.7
Total	3.0(3.5)	3.6	3.5(1.0)	3.6	2.8
Six or more					
5,000 - 15,000	2.9(2.8)	2.8	3.3(4.9)	3.0	2.4
Under 5,000	5.3(4.6)	5.2	3.5(1.9)	4.6	3.2
Total	4.4(3.9)	4.3	3.4(3.1)	4.0	2.8

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[a] In many instances the carrier was not named, but merely the type of carrier was checked. These were counted the same as a named carrier.

[b] These figures represent the number of respondents who did not list any carrier in that category. However, the numbers do not reflect the actual number of respondents who did not use that form of transportation, since some respondents failed to complete Question 10.

TABLE A-5
(Question 10 - Parcel Service)
NUMBER OF DIFFERENT CARRIERS[a] USED BY EACH FIRM

Number of Carriers Used	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Zero [b]					
5,000 - 15,000	3.6(4.6)	11.0	9.3(5.0)	10.4	15.2
Under 5,000	7.1(7.0)	5.2	5.8(3.4)	5.4	13.5
Total	5.8(6.0)	7.5	7.2(4.1)	7.4	14.2
One					
5,000 - 15,000	38.7(35.8)	32.1	34.7(35.9)	33.1	51.8
Under 5,000	44.6(41.4)	28.9	33.8(37.0)	30.6	52.1
Total	42.4(39.2)	30.1	34.2(36.5)	31.6	52.0
Two					
5,000 - 15,000	46.7(46.8)	43.1	31.6(30.6)	39.0	27.4
Under 5,000	33.9(34.9)	49.2	49.8(46.2)	49.4	27.2
Total	38.7(39.5)	46.8	42.6(39.8)	45.4	27.3
Three					
5,000 - 15,000	10.2(11.9)	11.9	17.2(20.3)	13.8	5.3
Under 5,000	12.9(15.4)	14.8	9.6(12.0)	12.9	6.9
Total	11.9(14.0)	13.7	12.6(15.4)	13.3	6.2
Four					
5,000 - 15,000	0.7(0.9)	0.9	2.7(3.6)	1.5	0.3
Under 5,000	1.5(1.4)	1.3	0.4(0.5)	1.0	0.1
Total	1.2(1.2)	1.2	1.3(1.8)	1.2	0.2
Five					
5,000 - 15,000	0.0(0.0)	0.0	4.5(4.6)	1.6	0.0
Under 5,000	0.0(0.0)	0.0	0.4(0.7)	0.2	0.2
Total	0.0(0.0)	0.0	2.0(2.3)	0.7	0.1
Six or more					
5,000 - 15,000	0.0(0.0)	0.9	0.0(0.0)	0.6	0.0
Under 5,000	0.0(0.0)	0.6	0.1(0.2)	0.4	0.1
Total	0.0(0.0)	0.7	0.1(0.1)	0.5	0.0

[a] In many instances the carrier was not named, but merely the type of carrier was checked. These were counted the same as a named carrier.

[b] These figures represent the number of respondents who did not list any carrier in that category. However, the numbers do not reflect the actual number of respondents who did not use that form of transport[illegible]on, since some respondents failed to [illegible]plete Question 10.

TABLE A-5
(Question 10 - Other For-Hire)
NUMBER OF DIFFERENT CARRIERS [a] USED BY EACH FIRM

Number of Carriers Used	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Zero [b]					
5,000 - 15,000	24.1(22.0)	33.0	30.5(25.5)	32.1	25.4
Under 5,000	23.9(22.1)	23.5	31.2(33.3)	26.2	42.1
Total	24.0(22.1)	27.2	30.9(30.2)	28.5	35.3
One					
5,000 - 15,000	32.1(30.3)	17.4	25.2(30.6)	20.2	19.1
Under 5,000	27.1(26.5)	21.7	24.9(24.4)	22.8	25.9
Total	29.0(28.0)	20.0	25.0(26.9)	21.8	23.1
Two					
5,000 - 15,000	15.3(14.7)	21.1	23.6(19.4)	22.0	23.9
Under 5,000	20.5(19.0)	28.1	23.5(21.3)	26.5	11.9
Total	18.6(17.3)	25.4	23.6(20.6)	24.8	16.8
Three					
5,000 - 15,000	8.0(9.2)	10.1	7.7(8.5)	9.2	19.4
Under 5,000	12.5(13.5)	15.0	10.5(11.3)	13.4	8.6
Total	10.8(11.8)	13.1	9.4(10.1)	11.8	13.0
Four					
5,000 - 15,000	7.3(8.3)	7.3	7.5(10.6)	7.4	4.1
Under 5,000	8.9(10.0)	5.2	3.0(3.3)	4.4	5.0
Total	8.3(9.3)	6.0	4.7(6.3)	5.6	4.6
Five					
5,000 - 15,000	5.8(7.3)	5.5	2.5(1.1)	4.4	4.3
Under 5,000	4.5(5.4)	2.9	5.4(4.7)	3.8	5.3
Total	5.0(6.1)	3.9	4.3(3.2)	4.0	4.9
Six or more					
5,000 - 15,000	7.3(8.3)	5.5	3.0(4.2)	4.6	3.8
Under 5,000	2.6(3.5)	3.5	1.6(1.7)	2.8	1.3
Total	4.4(5.3)	4.3	2.1(2.7)	3.5	2.3

[a] In many instances the carrier was not named, but merely the type of carrier was checked. These were counted the same as a named carrier.

[b] These figures represent the number of respondents who did not list any carrier in that category. However, the numbers do not reflect the actual number of respondents who did not use that form of transportation, since some respondents failed to complete Question 10.

TABLE A-6
(Question 5A - Inbound)
AVAILABILITY OF SERVICE WHEN NEEDED

Availability Rating	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Always(100%)					
5,000 - 15,000	49.3(48.1)	57.0	47.5(50.1)	53.6	36.1
Under 5,000	46.7(46.5)	44.5	50.9(51.5)	46.7	58.8
Total	47.7(47.1)	49.3	49.5(51.0)	49.4	49.8
Almost Always(90-99%)					
5,000 - 15,000	35.8(37.7)	32.0	33.0(31.6)	32.3	39.4
Under 5,000	35.3(35.9)	40.3	33.0(32.4)	37.8	25.0
Total	35.5(36.6)	37.2	33.0(32.0)	35.7	30.8
Usually(60-89%)					
5,000 - 15,000	13.4(13.2)	8.0	14.3(15.4)	10.2	19.3
Under 5,000	13.8(13.3)	10.2	12.4(13.6)	11.0	15.8
Total	13.7(13.3)	9.4	13.1(14.4)	10.7	17.2
Sometimes(1-59%)					
5,000 - 15,000	1.5(0.9)	2.0	5.3(2.8)	3.2	5.2
Under 5,000	2.8(3.1)	4.3	3.2(2.4)	3.9	0.3
Total	2.3(2.2)	3.4	4.0(2.6)	3.6	2.3
Never(0%)					
5,000 - 15,000	0.0(0.0)	1.0	0.0(0.0)	0.6	0.0
Under 5,000	1.4(1.2)	0.6	0.5(0.1)	0.6	0.0
Total	0.9(0.7)	0.8	0.3(0.0)	0.6	0.0

TABLE A-6
(Question 5A - Outbound)
AVAILABILITY OF SERVICE WHEN NEEDED

Availability Rating	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Always(100%)					
5,000 - 15,000	50.0(48.2)	50.9	46.5(53.4)	49.3	44.6
Under 5,000	42.0(44.6)	42.3	46.2(44.2)	43.5	54.3
Total	45.2(46.1)	45.6	46.3(48.7)	45.8	49.5
Almost Always(90-99%)					
5,000 - 15,000	34.8(35.7)	36.8	36.9(37.2)	36.9	33.8
Under 5,000	32.3(31.7)	44.3	32.8(33.0)	40.9	38.6
Total	33.3(33.4)	41.5	34.6(35.1)	39.3	36.2
Usually(60-89%)					
5,000 - 15,000	10.6(10.7)	7.0	13.1(5.1)	9.2	18.2
Under 5,000	16.5(13.7)	5.9	15.7(17.7)	8.8	6.4
Total	14.1(12.5)	6.3	14.5(11.5)	9.0	12.3
Sometimes(1-59%)					
5,000 - 15,000	3.0(3.6)	3.5	3.5(4.3)	3.5	3.5
Under 5,000	7.2(8.7)	5.3	4.3(4.9)	5.0	0.7
Total	5.5(6.6)	4.7	4.0(4.6)	4.4	2.1
Never(0%)					
5,000 - 15,000	1.5(1.8)	1.8	0.0(0.0)	1.1	0.0
Under 5,000	2.1(1.2)	2.1	1.0(0.2)	1.8	0.0
Total	1.8(1.5)	2.0	0.6(0.1)	1.5	0.0

TABLE A-7
(Question 5B - Inbound)
SERVICE AVAILABILITY: COMPARISONS

Availability Comparison	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
More Often					
5,000 - 15,000	17.4(16.2)	17.2	17.0(23.8)	17.1	15.0
Under 5,000	10.4(11.1)	18.2	12.3(11.4)	16.1	5.9
Total	13.1(13.1)	17.8	14.1(16.4)	16.5	9.5
About the Same					
5,000 - 15,000	82.6(83.8)	80.8	81.3(73.7)	81.0	79.7
Under 5,000	86.8(86.4)	79.3	85.6(88.4)	81.5	92.4
Total	85.2(85.4)	79.9	83.9(82.4)	81.3	87.3
Less Often					
5,000 - 15,000	0.0(0.0)	2.0	1.8(2.6)	1.9	5.2
Under 5,000	2.8(2.5)	2.5	2.1(0.3)	2.4	1.8
Total	1.7(1.5)	2.3	2.0(1.2)	2.2	3.1

TABLE A-7
(Question 5B - Outbound)
SERVICE AVAILABILITY: COMPARISONS

Availability Comparison	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
More Often					
5,000 - 15,000	19.4(17.5)	19.3	19.8(26.6)	19.5	10.3
Under 5,000	11.3(13.7)	20.5	10.6(5.7)	17.6	6.8
Total	14.6(15.3)	20.1	14.7(16.0)	18.3	8.5
About the Same					
5,000 - 15,000	79.1(80.7)	75.4	76.9(69.1)	76.0	89.4
Under 5,000	81.5(80.1)	77.3	87.3(92.9)	80.3	89.6
Total	80.5(80.3)	76.6	82.7(81.2)	78.5	89.5
Less Often					
5,000 - 15,000	1.5(1.8)	5.3	3.3(4.3)	4.6	0.2
Under 5,000	7.2(6.2)	2.2	2.1(1.4)	2.2	3.6
Total	4.9(4.4)	3.3	2.6(2.8)	3.1	2.0

TABLE A-8
(Question 11A - Private)
CARRIERS STARTING SERVICE IN LAST 6 MONTHS

Number of Carriers	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
One					
5,000 - 15,000	2.(1.)	2.	7.(7.)	9.	3.
Under 5,000	8.(8.)	6.	12.(7.)	18.	10.
Total	10.(9.)	8.	19.(14.)	27.	13.
Two					
5,000 - 15,000	0.(0.)	0.	1.(1.)	1.	0.
Under 5,000	3.(2.)	4.	2.(2.)	6.	3.
Total	3.(2.)	4.	3.(3.)	7.	3.
Three					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	1.(1.)	0.	0.(0.)	0.	0.
Total	1.(1.)	0.	0.(0.)	0.	0.
Four					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	2.(1.)	1.	2.(0.)	3.	0.
Total	2.(1.)	1.	2.(0.)	3.	0.

TABLE A-8
(Question 11A - Parcel Service)
CARRIERS STARTING SERVICE IN LAST 6 MONTHS

Number of Carriers	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
One					
5,000 - 15,000	7.(7.)	3.	4.(4.)	7.	4.
Under 5,000	10.(10.)	5.	11.(6.)	16.	8.
Total	17.(17.)	8.	15.(10.)	23.	12.
Two					
5,000 - 15,000	1.(1.)	0.	0.(0.)	0.	0.
Under 5,000	1.(1.)	0.	3.(3.)	3.	0.
Total	2.(2.)	0.	3.(3.)	3.	0.
Three					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.
Four					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.

TABLE A-8
(Question 11A - Other For-Hire)
CARRIERS STARTING SERVICE IN LAST 6 MONTHS

Number of Carriers	Phase 1 Group 1	------------------ Group 1	-Phase 2- Group 2	------------ Group 1&2	Phase 3 Group 2
One					
5,000 - 15,000	8.(8.)	7.	18.(14.)	25.	12.
Under 5,000	20.(18.)	10.	31.(18.)	41.	15.
Total	28.(26.)	17.	49.(32.)	66.	27.
Two					
5,000 - 15,000	1.(1.)	0.	6.(2.)	6.	1.
Under 5,000	6.(5.)	0.	10.(9.)	10.	6.
Total	7.(6.)	0.	16.(11.)	16.	7.
Three					
5,000 - 15,000	0.(0.)	0.	1.(1.)	1.	2.
Under 5,000	0.(0.)	0.	4.(3.)	4.	2.
Total	0.(0.)	0.	5.(4.)	5.	4.
Four					
5,000 - 15,000	1.(1.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	2.(2.)	2.	2.
Total	1.(1.)	0.	2.(2.)	2.	2.

TABLE A-8
(Question 11B - Private)
CARRIERS STOPPING SERVICE IN LAST 6 MONTHS

Number of Carriers	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
One					
5,000 - 15,000	1.(1.)	1.	1.(1.)	2.	0.
Under 5,000	3.(3.)	3.	5.(4.)	8.	6.
Total	4.(4.)	4.	6.(5.)	10.	6.
Two					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	2.(2.)	2.	0.(0.)	2.	0.
Total	2.(2.)	2.	0.(0.)	2.	0.
Three					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	1.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	1.
Four					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.

TABLE A-8
(Question 11B - Parcel Service)
CARRIERS STOPPING SERVICE IN LAST 6 MONTHS

Number of Carriers	Phase 1	-----------------	Phase 2	-----------	Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
One					
5,000 - 15,000	0.(0.)	0.	3.(3.)	3.	1.
Under 5,000	2.(2.)	2.	3.(3.)	5.	1.
Total	2.(2.)	2.	6.(6.)	8.	2.
Two					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.
Three					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.
Four					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.

TABLE A-8
(Question 11B - Other For-Hire)
CARRIERS STOPPING SERVICE IN LAST 6 MONTHS

Number of Carriers	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
One					
5,000 - 15,000	7.(7.)	2.	8.(6.)	10.	7.
Under 5,000	11.(8.)	4.	10.(6.)	14.	9.
Total	18.(15.)	6.	18.(12.)	24.	16.
Two					
5,000 - 15,000	1.(1.)	0.	0.(0.)	0.	2.
Under 5,000	0.(0.)	0.	6.(6.)	6.	2.
Total	1.(1.)	0.	6.(6.)	6.	4.
Three					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	1.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	1.
Four					
5,000 - 15,000	0.(0.)	0.	0.(0.)	0.	0.
Under 5,000	0.(0.)	0.	0.(0.)	0.	0.
Total	0.(0.)	0.	0.(0.)	0.	0.

TABLE A-9
(Question 4A - Inbound)
ON-TIME SERVICE

On-Time Rating	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Always(100%)					
5,000 - 15,000	16.5(14.3)	21.6	13.0(16.1)	18.5	14.2
Under 5,000	23.8(19.9)	15.3	20.2(20.3)	17.0	24.6
Total	21.0(17.6)	17.7	17.4(18.6)	17.6	20.5
Almost Always(90-99%)					
5,000 - 15,000	48.9(51.4)	45.4	56.4(53.2)	49.3	51.4
Under 5,000	45.4(52.3)	52.9	41.9(40.5)	49.0	47.9
Total	46.8(52.0)	50.0	47.5(45.7)	49.1	49.3
Usually(60-89%)					
5,000 - 15,000	30.8(30.5)	26.8	23.2(25.2)	25.5	26.4
Under 5,000	26.9(23.4)	25.3	31.7(34.2)	27.5	26.2
Total	28.4(26.2)	25.9	28.4(30.5)	26.8	26.3
Sometimes(1-59%)					
5,000 - 15,000	3.8(3.8)	5.2	7.3(5.6)	5.9	5.4
Under 5,000	2.4(3.2)	6.5	5.1(4.8)	6.0	1.2
Total	2.9(3.4)	6.0	6.0(5.1)	6.0	2.9
Never(0%)					
5,000 - 15,000	0.0(0.0)	1.0	0.1(0.0)	0.7	2.5
Under 5,000	1.4(1.3)	0.0	1.1(0.2)	0.4	0.1
Total	0.9(0.8)	0.4	0.7(0.1)	0.5	1.1

TABLE A-9
(Question 4A - Outbound)
ON-TIME SERVICE

On-Time Rating	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Always(100%)					
5,000 - 15,000	19.7(19.6)	10.9	13.3(17.9)	11.8	19.7
Under 5,000	16.4(16.2)	18.1	28.1(26.4)	21.0	26.4
Total	17.8(17.6)	15.4	21.3(22.2)	17.3	23.0
Almost Always(90-99%)					
5,000 - 15,000	43.9(44.6)	60.0	60.5(58.8)	60.2	54.5
Under 5,000	51.4(54.9)	59.7	42.1(45.1)	54.6	61.1
Total	48.3(50.6)	59.8	50.6(52.0)	56.8	57.7
Usually(60-89%)					
5,000 - 15,000	33.3(32.1)	23.6	22.4(18.4)	23.2	22.0
Under 5,000	23.7(19.8)	19.4	24.6(23.0)	20.9	11.7
Total	27.7(25.0)	21.0	23.6(20.7)	21.8	16.9
Sometimes(1-59%)					
5,000 - 15,000	3.0(3.6)	5.5	3.5(4.7)	4.7	0.0
Under 5,000	7.4(7.8)	2.7	2.7(1.2)	2.7	0.8
Total	5.6(6.0)	3.7	3.0(2.9)	3.5	0.4
Never(0%)					
5,000 - 15,000	0.0(0.0)	0.0	0.3(0.2)	0.1	3.8
Under 5,000	1.1(1.3)	0.0	2.6(4.3)	0.8	0.0
Total	0.6(0.8)	0.0	1.6(2.3)	0.5	1.9

TABLE A-10
(Question 4B - Inbound)
ON-TIME SERVICE: PERFORMANCE COMPARISONS

On-Time Comparison	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
More Often					
5,000 - 15,000	19.7(20.0)	18.2	14.1(14.6)	16.7	15.0
Under 5,000	17.2(18.8)	23.5	14.6(16.0)	20.4	10.7
Total	18.2(19.3)	21.5	14.4(15.4)	19.0	12.4
About the Same					
5,000 - 15,000	79.5(79.0)	77.8	82.1(82.4)	79.3	81.8
Under 5,000	79.9(77.4)	72.8	82.1(81.3)	76.0	88.3
Total	79.8(78.1)	74.7	82.1(81.8)	77.3	85.7
Less Often					
5,000 - 15,000	0.8(1.0)	4.0	3.8(3.0)	4.0	3.2
Under 5,000	2.9(3.8)	3.7	3.3(2.7)	3.5	1.0
Total	2.0(2.6)	3.8	3.5(2.8)	3.7	1.9

TABLE A-10
(Question 4B - Outbound)
ON-TIME SERVICE: PERFORMANCE COMPARISONS

On-Time Comparison	Phase 1	---------------------	Phase 2	------------	Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
More Often					
5,000 - 15,000	21.2(21.4)	20.4	14.3(19.3)	18.1	13.2
Under 5,000	12.9(14.4)	18.2	11.9(13.3)	16.3	5.4
Total	16.3(17.4)	19.0	13.0(16.2)	17.0	9.4
About the Same					
5,000 - 15,000	72.7(73.2)	75.9	85.0(79.9)	79.3	86.5
Under 5,000	81.8(80.3)	79.7	82.4(82.6)	80.5	90.2
Total	78.0(77.3)	78.3	83.6(81.3)	80.0	88.3
Less Often					
5,000 - 15,000	6.1(5.4)	3.7	0.7(0.8)	2.6	0.2
Under 5,000	5.4(5.2)	2.1	5.7(4.1)	3.2	4.4
Total	5.7(5.3)	2.7	3.5(2.5)	3.0	2.2

TABLE A-11
(Question 7A - Inbound)
FREIGHT CONDITION: FREQUENCY OF ARRIVAL IN GOOD CONDITION

Arrival Description	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Always(100%)					
5,000 - 15,000	30.6(29.2)	38.4	31.3(29.9)	35.9	32.8
Under 5,000	28.6(28.8)	30.7	29.9(32.9)	30.4	37.0
Total	29.4(29.0)	33.6	30.4(31.7)	32.5	35.3
Almost Always(90-99%)					
5,000 - 15,000	49.3(49.1)	42.4	46.6(51.0)	43.9	47.7
Under 5,000	48.7(50.0)	55.7	49.6(50.1)	53.6	55.4
Total	48.9(49.6)	50.7	48.5(50.5)	49.9	52.3
Usually(60-89%)					
5,000 - 15,000	15.7(17.0)	13.1	16.4(13.6)	14.3	14.1
Under 5,000	16.9(17.8)	10.6	14.7(15.0)	12.0	5.7
Total	16.4(17.5)	11.6	15.4(14.4)	12.9	9.0
Sometimes(1-59%)					
5,000 - 15,000	3.0(3.8)	4.0	4.0(5.5)	4.0	2.9
Under 5,000	4.2(2.4)	3.0	4.7(2.0)	3.6	1.8
Total	3.7(3.0)	3.4	4.4(3.4)	3.8	2.2
Never(0%)					
5,000 - 15,000	1.5(0.9)	2.0	1.7(0.0)	1.9	2.5
Under 5,000	1.6(0.9)	0.0	1.0(0.0)	0.4	0.1
Total	1.6(0.9)	0.8	1.3(0.0)	0.9	1.1

TABLE A-11
(Question 7A - Outbound)
FREIGHT CONDITION: FREQUENCY OF ARRIVAL IN GOOD CONDITION

Arrival Description	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Always(100%)					
5,000 - 15,000	33.8(32.7)	32.1	33.0(39.4)	32.5	39.5
Under 5,000	38.7(38.1)	38.7	36.3(29.5)	38.0	42.0
Total	36.7(35.9)	36.3	34.8(34.5)	35.8	40.8
Almost Always(90-99%)					
5,000 - 15,000	44.6(43.6)	50.0	56.2(55.1)	52.2	45.2
Under 5,000	46.6(50.4)	53.4	42.0(51.4)	50.1	55.2
Total	45.8(47.6)	52.1	48.4(53.3)	50.9	50.3
Usually(60-89%)					
5,000 - 15,000	16.9(20.0)	12.5	7.4(5.1)	10.7	7.9
Under 5,000	12.6(10.2)	3.7	19.8(18.9)	8.3	2.3
Total	14.4(14.3)	7.0	14.2(11.9)	9.3	5.0
Sometimes(1-59%)					
5,000 - 15,000	1.5(1.8)	5.4	0.5(0.5)	3.6	3.8
Under 5,000	1.1(0.0)	4.2	1.8(0.0)	3.5	0.2
Total	1.2(0.8)	4.6	1.2(0.2)	3.6	2.0
Never(0%)					
5,000 - 15,000	3.1(1.8)	0.0	2.8(0.0)	1.0	3.6
Under 5,000	1.1(1.3)	0.0	0.1(0.2)	0.0	0.4
Total	1.9(1.5)	0.0	1.3(0.1)	0.4	1.9

TABLE A-12
(Question 7B - Inbound)
FREIGHT CONDITION COMPARISONS: FREQUENCY OF ARRIVAL IN GOOD CONDITION

Comparison	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
More Often					
5,000 - 15,000	15.8(15.1)	17.3	11.2(13.1)	15.1	16.2
Under 5,000	13.2(14.3)	17.2	11.8(15.1)	15.3	13.8
Total	14.2(14.6)	17.3	11.6(14.3)	15.2	14.7
About the Same					
5,000 - 15,000	82.7(83.0)	78.6	86.9(84.3)	81.6	78.3
Under 5,000	81.0(79.9)	79.1	84.5(84.7)	81.0	85.1
Total	81.7(81.2)	78.9	85.5(84.5)	81.2	82.4
Less Often					
5,000 - 15,000	1.5(1.9)	4.1	1.8(2.6)	3.3	5.5
Under 5,000	5.8(5.7)	3.7	3.7(0.2)	3.7	1.2
Total	4.1(4.2)	3.8	3.0(1.2)	3.5	2.9

TABLE A-12
(Question 7B - Outbound)
FREIGHT CONDITION COMPARISONS: FREQUENCY OF ARRIVAL IN GOOD CONDITION

Comparison	Phase 1	---------Phase 2---------			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
More Often					
5,000 - 15,000	20.0(20.0)	13.8	12.8(12.8)	13.4	9.0
Under 5,000	13.6(14.1)	18.8	6.7(8.4)	15.3	5.0
Total	16.2(16.5)	16.9	9.5(10.7)	14.6	7.0
About the Same					
5,000 - 15,000	78.5(78.2)	82.8	86.7(86.4)	84.2	90.6
Under 5,000	82.2(80.8)	79.1	90.8(91.2)	82.4	94.7
Total	80.7(79.7)	80.5	88.9(88.7)	83.1	92.6
Less Often					
5,000 - 15,000	1.5(1.8)	3.4	0.5(0.7)	2.4	0.5
Under 5,000	4.2(5.1)	2.1	2.6(0.4)	2.2	0.4
Total	3.1(3.8)	2.6	1.6(0.6)	2.3	0.4

TABLE A-13
(Question 7C - Inbound)
PROBLEMS RESOLVING FREIGHT CLAIMS: COMPARISONS

Comparison	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Problems More Often					
5,000 - 15,000	8.2(8.5)	6.1	8.8(10.3)	7.1	3.5
Under 5,000	7.9(8.6)	6.8	8.3(5.2)	7.4	3.8
Total	8.0(8.6)	6.5	8.5(7.3)	7.2	3.7
Problems About the Same					
5,000 - 15,000	35.1(36.8)	31.3	31.2(26.3)	31.3	36.0
Under 5,000	37.8(36.5)	31.9	30.2(30.4)	31.3	27.7
Total	36.7(36.6)	31.7	30.6(28.7)	31.3	31.0
Problems Less Often					
5,000 - 15,000	3.0(2.8)	1.0	7.0(10.1)	3.2	5.4
Under 5,000	5.3(5.1)	7.7	5.7(5.4)	7.0	2.5
Total	4.4(4.2)	5.1	6.2(7.3)	5.5	3.6
No Claims					
5,000 - 15,000	53.7(51.9)	61.6	52.9(53.2)	58.5	55.1
Under 5,000	49.0(49.8)	53.6	55.8(59.1)	54.4	66.0
Total	50.8(50.6)	56.7	54.7(56.7)	56.0	61.7

TABLE A-13
(Question 7C - Outbound)
PROBLEMS RESOLVING FREIGHT CLAIMS: COMPARISONS

Comparison	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Problems More Often					
5,000 - 15,000	6.2(5.5)	5.2	0.8(0.9)	3.6	0.9
Under 5,000	5.2(5.0)	2.1	5.0(4.5)	2.9	4.1
Total	5.6(5.2)	3.3	3.1(2.7)	3.2	2.5
Problems About the Same					
5,000 - 15,000	41.5(41.8)	37.9	44.5(36.9)	40.3	38.2
Under 5,000	45.0(42.0)	37.4	28.5(31.9)	34.9	29.3
Total	43.6(41.9)	37.6	35.9(34.5)	37.1	33.7
Problems Less Often					
5,000 - 15,000	1.5(1.8)	5.2	8.9(8.2)	6.5	0.2
Under 5,000	6.2(6.3)	8.4	9.5(7.4)	8.7	1.2
Total	4.3(4.5)	7.2	9.2(7.8)	7.8	0.7
No Claims					
5,000 - 15,000	50.8(50.9)	51.7	45.8(54.0)	49.6	60.7
Under 5,000	43.6(46.6)	52.1	57.0(56.2)	53.5	65.4
Total	46.5(48.4)	51.9	51.8(55.1)	51.9	63.1

TABLE A-14
(Question 12 - Inbound)
SHIFT IN USE OF PRIVATE OR FOR-HIRE SERVICE

Shift	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
From Private to For-hire					
5,000 - 15,000	2.2(2.8)	1.9	0.2(0.1)	1.3	0.2
Under 5,000	0.4(0.6)	0.3	1.3(0.3)	0.6	2.8
Total	1.1(1.4)	1.0	0.8(0.2)	0.9	1.7
From For-hire to Private					
5,000 - 15,000	3.7(3.7)	2.9	0.4(0.4)	2.0	3.0
Under 5,000	2.7(2.4)	1.6	4.2(3.9)	2.5	0.4
Total	3.1(2.9)	2.1	2.7(2.4)	2.3	1.5
No Shift					
5,000 - 15,000	94.1(93.5)	95.1	99.4(99.4)	96.7	96.8
Under 5,000	96.9(97.0)	98.1	94.5(95.8)	96.9	96.7
Total	95.8(95.7)	97.0	96.5(97.4)	96.8	96.8

TABLE A-14
(Questicn 12 - Outbound)
SHIFT IN USE OF PRIVATE OR FOR-HIRE SERVICE

Shift	Phase 1 Group 1	-------Phase 2------- Group 1	 Group 2	 Group 1&2	Phase 3 Group 2
From Private to For-hire					
5,000 - 15,000	2.5(2.9)	0.0	0.3(0.0)	0.1	0.2
Under 5,000	2.3(2.9)	0.4	0.7(0.0)	0.5	3.4
Total	2.4(2.9)	0.3	0.5(0.0)	0.3	1.8
From For-hire to Private					
5,000 - 15,000	3.5(2.9)	3.9	0.9(1.0)	2.9	0.7
Under 5,000	0.0(0.0)	2.2	6.5(9.8)	3.6	0.6
Total	1.0(1.2)	2.9	4.2(5.8)	3.3	0.7
No Shift					
5,000 - 15,000	95.1(94.2)	96.1	98.8(99.0)	97.0	99.1
Under 5,000	97.7(97.1)	97.4	92.8(90.2)	95.9	96.1
Total	96.7(95.9)	96.9	95.3(94.2)	96.4	97.5

TABLE A-15
(Question 6 - Inbound)
AVAILABILITY OF SERVICE OPTIONS: COMPARISONS

Options Comparison	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
More Options					
5,000 - 15,000	6.1(3.8)	7.9	6.6(4.1)	7.5	4.8
Under 5,000	6.5(6.1)	11.8	7.1(8.6)	10.1	6.1
Total	6.3(5.2)	10.3	6.9(6.8)	9.1	5.5
About the Same					
5,000 - 15,000	92.4(94.3)	88.1	89.9(93.2)	88.7	95.1
Under 5,000	86.5(87.7)	85.1	89.5(88.4)	86.7	90.9
Total	88.7(90.3)	86.3	89.6(90.3)	87.5	92.6
Fewer options					
5,000 - 15,000	1.5(1.9)	4.0	3.5(2.7)	3.8	0.2
Under 5,000	7.0(6.2)	3.1	3.4(3.0)	3.2	3.0
Total	4.9(4.5)	3.4	3.5(2.9)	3.4	1.9

TABLE A-15
(Question 6 - Outbound)
AVAILABILITY OF SERVICE OPTIONS: COMPARISONS

Options Comparison	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
More Options					
5,000 - 15,000	7.5(5.3)	14.0	5.5(3.4)	10.9	6.3
Under 5,000	8.2(7.4)	8.6	8.6(12.0)	8.6	11.6
Total	7.9(6.5)	10.6	7.2(7.7)	9.5	9.0
About the Same					
5,000 - 15,000	91.0(93.0)	80.7	91.4(92.5)	84.6	93.7
Under 5,000	86.7(87.6)	88.2	86.1(87.0)	87.6	84.2
Total	88.5(89.8)	85.4	88.5(89.7)	86.4	89.0
Fewer options					
5,000 - 15,000	1.5(1.8)	5.3	3.1(4.1)	4.5	0.0
Under 5,000	5.1(5.0)	3.2	5.3(1.0)	3.8	4.2
Total	3.7(3.6)	4.0	4.3(2.5)	4.1	2.1

TABLE A-16
(Question 8C - Inbound)
TRUCK SERVICE PRICE INFORMATION ADVANCE KNOWLEDGE: SOURCES

Sources	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Informed by Carrier					
5,000 - 15,000	41.6(37.4)	47.7	36.4(41.8)	43.6	37.3
Under 5,000	49.2(47.9)	48.4	49.9(49.5)	48.9	41.4
Total	46.4(44.6)	48.2	44.5(46.3)	46.9	39.7
From Experience					
5,000 - 15,000	31.4(33.9)	31.2	35.5(41.2)	32.7	17.9
Under 5,000	20.1(19.0)	31.5	27.5(30.4)	30.1	21.6
Total	24.3(24.8)	31.4	30.7(34.8)	31.1	20.1
Published Tariffs					
5,000 - 15,000	3.6(4.6)	2.8	1.6(2.0)	2.3	3.9
Under 5,000	5.8(6.0)	6.0	3.0(0.9)	4.9	3.2
Total	5.0(5.4)	4.7	2.4(1.3)	3.9	3.5
Informed by Rate Bureau					
5,000 - 15,000	2.2(1.8)	3.7	1.7(0.3)	3.0	2.4
Under 5,000	1.8(1.7)	1.7	1.2(1.9)	1.5	1.9
Total	1.9(1.8)	2.5	1.4(1.2)	2.1	2.1
Informed by shipper Assn					
5,000 - 15,000	6.6(6.4)	2.8	3.6(5.0)	3.1	5.2
Under 5,000	10.3(11.2)	4.1	10.4(9.6)	6.3	1.9
Total	8.9(9.3)	3.6	7.7(7.8)	5.0	3.2
Other					
5,000 - 15,000	7.3(6.4)	8.3	11.3(12.4)	9.4	2.8
Under 5,000	8.6(7.7)	8.0	6.7(7.3)	7.5	9.6
Total	8.1(7.2)	8.1	8.5(9.4)	8.2	6.8
Never					
5,000 - 15,000	5.8(4.6)	7.3	3.5(0.7)	6.0	12.1
Under 5,000	4.8(3.5)	6.6	6.5(8.6)	6.6	10.3
Total	5.2(3.9)	6.9	5.3(5.4)	6.3	11.0
Always Prepaid					
5,000 - 15,000	6.6(7.3)	2.8	2.9(2.2)	2.8	4.6
Under 5,000	3.1(4.1)	2.3	3.3(1.9)	2.7	5.2
Total	4.4(5.4)	2.5	3.1(2.1)	2.7	4.9

TABLE A-16
(Question 8C - Outbound)
TRUCK SERVICE PRICE INFORMATION ADVANCE KNOWLEDGE: SOURCES

Sources	Phase 1 Group 1	Phase 2 Group 1	 Group 2	 Group 1&2	Phase 3 Group 2
Informed by Carrier					
5,000 - 15,000	30.7(33.0)	33.9	35.5(43.4)	34.5	34.8
Under 5,000	32.2(35.1)	36.8	29.2(27.9)	34.2	25.5
Total	31.6(34.3)	35.7	31.7(34.2)	34.3	29.3
From Experience					
5,000 - 15,000	14.6(15.6)	15.6	16.9(20.4)	16.1	10.8
Under 5,000	9.5(9.7)	12.8	10.8(9.9)	12.1	10.0
Total	11.4(12.0)	13.9	13.2(14.2)	13.6	10.3
Published Tariffs					
5,000 - 15,000	3.6(4.6)	3.7	3.7(5.0)	3.7	4.1
Under 5,000	4.1(4.8)	4.6	4.0(2.6)	4.4	5.7
Total	3.9(4.7)	4.3	3.9(3.6)	4.1	5.0
Informed by Rate Bureau					
5,000 - 15,000	2.2(2.8)	1.8	0.5(0.6)	1.3	2.4
Under 5,000	0.9(1.2)	1.2	1.2(1.9)	1.2	1.4
Total	1.4(1.8)	1.4	0.9(1.4)	1.2	1.8
Informed by shipper Assn					
5,000 - 15,000	1.5(1.8)	2.8	1.8(2.5)	2.4	2.7
Under 5,000	3.9(4.1)	2.9	4.5(5.5)	3.4	0.9
Total	3.0(3.2)	2.8	3.4(4.3)	3.0	1.6
Other					
5,000 - 15,000	0.7(0.9)	2.8	5.1(3.1)	3.6	9.2
Under 5,000	0.6(0.8)	4.9	4.8(6.9)	4.9	5.8
Total	0.6(0.8)	4.1	4.9(5.3)	4.4	7.2
Never					
5,000 - 15,000	2.2(1.8)	3.7	0.4(0.4)	2.5	5.0
Under 5,000	0.4(0.0)	2.9	0.2(0.2)	1.9	3.5
Total	1.1(0.7)	3.2	0.3(0.3)	2.2	4.1
Always Prepaid					
5,000 - 15,000	0.0(0.0)	0.0	1.5(0.0)	0.5	0.1
Under 5,000	0.4(0.6)	0.0	2.0(1.6)	0.7	0.1
Total	0.3(0.4)	0.0	1.8(1.0)	0.6	0.1

TABLE A-17
(Question 8B - Inbound)
TRUCK SERVICE PRICE INFORMATION: ADVANCE KNOWLEDGE COMPARISONS

Comparison	Phase 1 Group 1	Phase 2 Group 1	 Group 2	 Group 1&2	Phase 3 Group 2
More Often					
5,000 - 15,000	4.6(4.9)	6.7	0.4(0.3)	4.4	1.4
Under 5,000	5.3(7.1)	7.9	3.8(3.3)	6.5	1.7
Total	5.0(6.2)	7.4	2.5(2.0)	5.7	1.6
About the Same					
5,000 - 15,000	86.9(85.4)	91.1	95.6(96.6)	92.7	95.5
Under 5,000	88.7(88.2)	84.1	86.3(87.2)	84.8	91.5
Total	88.0(87.1)	86.7	89.9(91.2)	87.8	93.1
Less Often					
5,000 - 15,000	8.5(9.7)	2.2	4.0(3.1)	2.9	3.1
Under 5,000	6.0(4.7)	8.1	9.9(9.5)	8.7	6.8
Total	6.9(6.7)	5.9	7.6(6.8)	6.5	5.3

TABLE A-17
(Question 88 - Outbound)
TRUCK SERVICE PRICE INFORMATION: ADVANCE KNOWLEDGE COMPARISONS

Comparison	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
More Often					
5,000 - 15,000	9.1(10.7)	3.4	3.4(0.2)	3.4	1.9
Under 5,000	10.4(12.6)	9.5	8.0(7.4)	9.1	3.7
Total	9.9(11.8)	7.2	5.9(3.7)	6.8	2.8
About the Same					
5,000 - 15,000	86.4(83.9)	94.8	96.3(99.3)	95.3	97.7
Under 5,000	85.5(83.6)	85.2	86.0(87.9)	85.4	88.5
Total	85.8(83.7)	88.9	90.5(93.7)	89.4	93.0
Less Often					
5,000 - 15,000	4.5(5.4)	1.7	0.4(0.5)	1.2	0.5
Under 5,000	4.1(3.8)	5.3	6.0(4.7)	5.5	7.8
Total	4.3(4.4)	3.9	3.5(2.5)	3.8	4.2

TABLE A-18
(Question 8A - Inbound)
TRUCK SERVICE PRICE INFORMATION: MEASURE OF ADVANCE KNOWLEDGE

Advance Knowledge	Phase 1	Phase 2			Phase 3
	Group 1	Group 1	Group 2	Group 1&2	Group 2
Always(100%)					
5,000 - 15,000	13.0(11.7)	12.1	4.9(5.9)	9.6	6.5
Under 5,000	11.9(11.8)	14.0	15.1(13.7)	14.4	13.5
Total	12.3(11.7)	13.3	11.3(10.5)	12.6	10.7
Almost Always(90-99%)					
5,000 - 15,000	18.3(20.4)	19.2	16.2(14.4)	18.1	33.4
Under 5,000	18.4(18.6)	23.8	12.6(13.8)	19.9	16.4
Total	18.3(19.3)	22.1	14.0(14.0)	19.2	23.1
Usually(60-89%)					
5,000 - 15,000	8.4(7.8)	13.1	14.0(16.4)	13.4	7.3
Under 5,000	12.7(13.6)	9.4	9.7(7.5)	9.5	11.3
Total	11.0(11.3)	10.8	11.3(11.1)	11.0	9.7
Sometimes(1-59%)					
5,000 - 15,000	20.6(20.4)	17.2	21.3(22.0)	18.6	18.5
Under 5,000	19.5(17.6)	17.2	18.2(19.1)	17.6	13.6
Total	19.9(18.7)	17.2	19.4(20.3)	18.0	15.5
Never(0%)					
5,000 - 15,000	28.2(26.2)	25.3	38.0(36.1)	29.7	20.6
Under 5,000	26.2(24.7)	26.8	31.7(28.8)	28.5	27.9
Total	27.0(25.3)	26.2	34.1(31.8)	29.0	25.1
Always Prepaid					
5,000 - 15,000	11.5(13.6)	13.1	5.6(5.3)	10.5	13.6
Under 5,000	11.3(13.7)	8.7	12.7(17.0)	10.1	17.3
Total	11.4(13.6)	10.4	10.1(12.3)	10.3	15.9

TABLE A-18
(Question 8A - Outbound)
TRUCK SERVICE PRICE INFORMATION: MEASURE OF ADVANCE KNOWLEDGE

Advance Knowledge	Phase 1 Group 1	Phase 2 Group 1	Phase 2 Group 2	Phase 2 Group 1&2	Phase 3 Group 2
Always(100%)					
5,000 - 15,000	25.4(24.6)	21.1	22.2(24.9)	21.5	17.1
Under 5,000	25.7(24.9)	30.4	34.4(33.5)	31.6	31.5
Total	25.6(24.8)	26.9	29.0(29.1)	27.6	24.4
Almost Always(90-99%)					
5,000 - 15,000	28.4(29.8)	22.8	26.3(26.1)	24.1	32.1
Under 5,000	23.8(25.1)	27.2	13.4(14.9)	23.1	24.0
Total	25.6(27.1)	25.6	19.2(20.6)	23.5	28.0
Usually(60-89%)					
5,000 - 15,000	11.9(10.5)	17.5	21.7(24.9)	19.1	10.6
Under 5,000	14.4(15.0)	7.4	15.0(14.8)	9.7	14.4
Total	13.4(13.1)	11.2	18.0(20.0)	13.4	12.5
Sometimes(1-59%)					
5,000 - 15,000	17.9(17.5)	15.8	13.6(10.3)	15.0	19.5
Under 5,000	18.5(17.4)	20.1	15.2(15.0)	18.6	9.9
Total	18.3(17.5)	18.5	14.5(12.6)	17.2	14.6
Never(0%)					
5,000 - 15,000	13.4(14.0)	19.3	13.1(13.3)	17.0	12.6
Under 5,000	13.5(15.1)	13.7	11.4(7.4)	13.0	11.1
Total	13.5(14.7)	15.8	12.2(10.4)	14.6	11.8
Always Prepaid					
5,000 - 15,000	3.0(3.5)	3.5	3.1(0.5)	3.4	8.1
Under 5,000	4.1(2.5)	1.0	10.5(14.4)	3.9	9.1
Total	3.7(2.9)	2.0	7.2(7.3)	3.7	8.6

Appendix B

QUESTIONNAIRE DESIGN

The questionnaire was designed to obtain critical information about small community service and assess the impacts on service due to the Motor Carrier Act of 1980 (signed into law July 1, 1980). Within those general objectives, three additional constraints were placed upon the instrument design.

1. The questionnaire must be worded as simply and jargon-free as possible. Pre-testing of the questionnaire to selected small community shippers (outside of sample) indicated that the level of shipper familiarity with trucking industry terms and Commission regulatory definitions was low.
2. The questionnaire should be brief and require no respondent research. In order to help maximize shipper response rate we attempted to minimize the respondent burden. This was considered especially important because each respondent would be asked to complete the questionnaire twice (at six month intervals).
3. Include no rate related information in the questionnaires. It was felt that ascertaining changes in motor carrier rates by asking shippers directly would not be a useful or accurate means of investigating rate changes. This decision was based on the reasoning that 1) nearly all prices were increasing during the study period, and an accurate measure of the changes would require shipper research; 2) while shipper freight costs may have increased, rates (i.e., $ per hundredweight) may have decreased -- thus again leading to inaccurate answers.

Working within these constraints, the questionnaire contained in this appendix was produced.

A number of people outside the ICC and representing diverse groups were consulted in drafting this questionnaire. The groups include the U.S. Congress, the U.S. Department of Transportation, The American Trucking Associations, the State of Florida House of

Appendix B (cont'd.)
Page 2

Representatives, selected shippers, and members of the academic community. These individuals are as follows:

1. Lana Batts, American Trucking Associations
2. Karen L. Borlaug, U.S. Department of Transportation
3. Edward Castonguay, Economic (shipper)
4. Gary Fauth, Harvard University
5. John F. Fryer, House Public Works and Transportation, Committee Staff
6. N. Thomas Harris, American Trucking Associations
7. Alice E. Kidder, Syracuse University
8. Mac Lange, DFM Union Garage (shipper)
9. William K. Ris, Senate Commerce Committee
10. Andy Vermilya, State of Florida, House Committee on Regulatory Reform
11. Dabney T. Waring, Jr., Motor Common Carrier Associations
12. Peyton L. Wynns, Senate Commerce Committee Staff

APPROVED BY OMB
3120-0051

INTERSTATE COMMERCE COMMISSION

SMALL COMMUNITY TRUCK SERVICE STUDY

Name ______________________________ Date________

Business Name
and Address ______________________________
____
____
____

Telephone ____________________

Type of Business

Retailer	_____	Agriculture	_____	Manufacturer	_____
Wholesaler	_____	Services	_____	Other	_____
Construction	____	Mining	_____		

Please correct any errors in the above information.

HELPFUL HINTS

We understand that many of you who will answer these questions usually only send and receive small amounts of freight or even simply small packages. We are still very interested in how these shipments are transported. Therefore, when a question refers to "shipments" you should keep in mind any type of parcel, general freight, merchandise, equipment, or business supplies. (You may disregard first class mail or home deliveries).

By simply checking the appropriate box (or boxes) in each question, this survey will only take about 15 minutes to complete. Of course, if you have anything else to add about your truck service or truck rates, we'll be glad to hear about it. Thanks.

1. PRIVATE AND FOR-HIRE TRUCKING

A. In the last 6 months, did your company send or receive any shipments by PRIVATE truck?*

Yes ☐ No ☐

B. In the last 6 months, did your company send or receive any shipments by FOR-HIRE trucks such as: UPS, Parcel Post, other parcel carriers, general freight trucking companies or other regulated trucks. Also include shipments by bus package service.

Yes ☐ No ☐

* Private trucks include your own truck(s), the trucks of a parent or sister company, the trucks of a supplier, or the trucks of a customer.

If your answers to Questions 1A and 1B were both "NO",

please check here ☐ and return the questionnaire.

Thank you.

2. TYPES OF TRANSPORTATION USED

In the last 6 months, check all the types of transportation that carried at least one shipment to or from your company.

Type of Service	To Your Company	From Your Company
Private Truck	☐	☐
UPS	☐	☐
Post Office (Parcel Post)	☐	☐
Bus Package	☐	☐
Other Parcel Services	☐	☐
Other Trucks (such as General Freight)	☐	☐
Air Freight	☐	☐
Railroad	☐	☐
Other (specify) ____________________	☐	☐

3. TOTAL SHIPMENTS PER WEEK

Estimate approximately how many shipments you receive and send each week (give the total number for all types of transportation).

RECEIVE ___ shipments per week SEND ___ shipments per week

QUESTIONS 4-9 REFER ONLY TO FOR-HIRE** TRUCK SERVICE

**For-hire truck service is performed by a company whose primary business is transportation and is not one of your customers or suppliers. Examples include UPS, Parcel Post (Post Office), bus package service, other parcel carriers, general freight carriers or other regulated trucks.

4. ON-TIME SERVICE

A. In the last 6 months, how often was for-hire truck service to and from your company on-time?

To Your Company (Receive)		From Your Company (Send)
☐	always (100%)	☐
☐	almost always (90-99%)	☐
☐	usually (60-89%)	☐
☐	sometimes (1-59%)	☐
☐	never (0%)	☐
☐ receive no shipments		send no shipments ☐

B. In the last 6 months, was this for-hire truck service on-time, more often, less often, or about the same as before?

To Your Company (Receive)		From Your Company (Send)
☐	more often	☐
☐	about the same	☐
☐	less often	☐
☐ receive no shipments		send no shipments ☐

5. AVAILABILITY OF SERVICE

A. In the last 6 months, how often was for-hire truck service to and from your company available when you needed it?

To Your Company (Receive)			From Your Company (Send)
☐	always (100%)		☐
☐	almost always (90-99%)		☐
☐	usually (60-89%)		☐
☐	sometimes (1-59%)		☐
☐	never (0%)		☐
☐	receive no shipments	send no shipments	☐

B. In the last 6 months, was this for-hire truck service available when you needed it more often, less often or about the same as before?

To Your Company (Receive)			From Your Company (Send)
☐	more often		☐
☐	about the same		☐
☐	less often		☐
☐	receive no shipments	send no shipments	☐

6. SERVICE CHOICES

In the last 6 months, have you had more, less, or about the same number of choices for ways to receive and ship your freight by for hire truck?

To Your Company (Receive)			From Your Company (Send)
☐	more choices		☐
☐	about the same		☐
☐	less choices		☐
☐	receive no shipments	send no shipments	☐

7. FREIGHT LOSSES (losses, damages, or shortages)

A. In the last 6 months, how often did your for-hire truck shipments to and from your company arrive in good condition (that is, without loss or damage or shortage)?

To Your Company (Receive)		From Your Company (Send)
☐	...... always (100%)	☐
☐	...... almost always (90-99%)	☐
☐	...... usually (60-89%)	☐
☐	...... sometimes (1-59%)	☐
☐	...... never (0%)	☐
☐ rec no shipments		send no shipments ☐

B. In the last 6 months, did these shipments to and from your company arrive in good condition more often, less often, or about the same as before?

To Your Company (Receive)		From Your Company (Send)
☐	.... more often	☐
☐	.... about the same	☐
☐	.... less often	☐
☐ receive no shipments	....	send no shipments ☐

C. In the last 6 months, did you have problems settling loss and damage claims on shipments to and from your company more often, less often, or about the same as before?

To Your Company (Receive)		From Your Company (Send)
☐	...... problems more often	☐
☐	...... problems about the same	☐
☐	...... problems less often	☐
☐	.... no claims	☐
☐ rec no shipments		send no shipments ☐

8. TRUCK SERVICE PRICE INFORMATION

A. Before you actually receive the bill from a for-hire carrier for service to or from your company, how often do you know the amount you will be charged?

To Your Company (Receive) From Your Company (Send)

☐ ...... always (100%) .... ☐
☐ ...... almost always (90-99%) ...... ☐
☐ ...... usually (60-89%) .... ☐
☐ ...... sometimes (1-59%) .... ☐
☐ ...... never (0%) .... ☐
☐ ...... always prepaid .... ☐
☐ rec no shipments send no shipments ☐

B. In the last 6 months, have you been able to obtain this for-hire truck service price information in advance more often, less often, or about the same as before?

To Your Company (Receive) From Your Company (Send)

☐ .... more often .... ☐
☐ .... about the same .... ☐
☐ .... less often .... ☐
☐ receive no shipments .... send no shipments ☐

C. How do you find out this information in advance?

To Your Company (Receive) From Your Company (Send)

☐ ...... informed by the carrier ...... ☐
☐ ...... from experience .... ☐
☐ ...... published tariffs .... ☐
☐ ...... informed by a rate bureau .... ☐
☐ ..informed by shipper association ... ☐
☐ ...... other (specify) _____________ ☐

9. WEIGHT OF TRUCK SHIPMENTS

In Columns 1 & 2, check each shipment category in which you received or sent at least one for-hire truck shipment of that size during the last 6 months. In Columns 3 & 4, check the one category in which you received and sent the most shipments during the last 6 months.

Shipment Category	(1) Check whichever categories you used RECEIVED	(2) SENT	(3) Check one category in each column RECEIVED MOST	(4) SENT MOST
1-49 pounds per shipment	☐	☐	☐	☐
50-499 pounds per shipment	☐	☐	☐	☐
500-9,999 pounds per shipment	☐	☐	☐	☐
over 10,000 pounds per shipment	☐	☐	☐	☐
no shipments	☐	☐	☐	☐

10. COMPANIES PROVIDING TRUCK SERVICE

List all the companies you know of that have carried truck shipments to or from your company in the last 6 months and check which type of service they provided. For any company you don't know the name of, check a "Name Unknown" block and check their type of service.

Company Name	Private Truck	Parcel Service	Other For-Hire Truck
______________________	☐	☐	☐
______________________	☐	☐	☐
______________________	☐	☐	☐
______________________	☐	☐	☐
______________________	☐	☐	☐
______________________	☐	☐	☐
Name Unknown ☐	☐	☐	☐
Name Unknown ☐	☐	☐	☐
Name Unknown ☐	☐	☐	☐

11. TRUCK SERVICE: STARTED AND STOPPED

A. List all the companies you know of which started providing truck service to or from your company in the last 6 months and check which types of service they provided.

Company Name	Private Truck	Parcel Service	Other For-Hire Truck
____________________	☐	☐	☐
____________________	☐	☐	☐
____________________	☐	☐	☐
____________________	☐	☐	☐

B. List all the companies you know of which stopped providing truck service to or from your company in the last six months and check which types of service they had provided.

Company Name	Private Truck	Parcel Service	Other For-Hire Truck
____________________	☐	☐	☐
____________________	☐	☐	☐
____________________	☐	☐	☐
____________________	☐	☐	☐

12. CHANGES IN USE OF PRIVATE VS FOR-HIRE TRUCK

In the last 6 months, did your company shift its freight traffic from private to for-hire service, or from for-hire to private?

Receiving Shipments		Sending Shipments
☐	.... shifted from private to FOR-HIRE ..	☐
☐	.... shifted from for-hire to PRIVATE ..	☐
☐	.... no shift	☐
☐	receive no shipments .... send no shipments	☐

Appendix C

DESCRIPTION OF SURVEY PLAN

Selection of Communities

A random sample of businesses in small rural communities was selected through a two-stage stratified systematic replicated random sampling procedure. The first stage was a sample of 193 rural communities in the contiguous states. The second stage was a sample of 900-1,100 businesses within these small communities. Questionnaires are completed by the managers of these businesses to measure their assessment of the quality of motor carrier service to and from their businesses.

The 1978 Rand McNally Commercial Atlas was used as the frame for selecting the sample of communities. Following the selection of the communities, Dun and Bradstreet's Marketing Services Division supplied a list of all businesses in these communities to be used as a frame for the selection of businesses.

The frame for selecting the sample of communities was limited to only those communities with populations between 100 and 15,000 which are not in Ranally Metro Areas and which are in the contiguous 48 states. The communities were divided into three population categories to increase the efficiency of the sample. These three categories are 5,001 to 15,000, 1,001 to 5,000 and 100 to 1,000. There are 1,054 such communities with populations between 5,001 and 15,000 and 4,311 between 1,001 and 5,000. There are 31,967 communities with populations between 100 and 1000 which are in the contiguous states; however, unlike the numbers for the first two categories, this number also includes communities within Ranally Metro Areas which are removed after sample selection.

The decision was made to require the selection of at least one community from each of the contiguous states. Since 48 separate samples would be inefficient, the following six step procedure was used to assure the random selection of at least one community from every state:

(1) A systematic sample of communities between 5,001 and 15,000 was selected in four replicates by using four random starts.

(2) A replicated systematic sample of communities between 100 and 1,000 was selected.

(3) Communities selected in step 2 which are in Ranally Metro Areas were removed from the sample.

(4) A list of ten states not represented in either of the 100 to 1,000 or the 5,001 to 15,000 categories was tallied.

(5) Communities in states which were tallied in step 4 were removed from the 1,001 to 5,000 category and a replicated systematic sample was selected of the remaining communities.

(6) The ten states which were tallied in step 4 were divided among the four replicates by using a random

permutation of ten, and a random community was selected from each of these states. Thus, the sample is composed of four strata as described in the table below:

TABLE 8

Strata For Sample of Small Communities

Stratum*	Population Category	Number in Frame	Number Selected	Number in Sample
1	5,001 - 15,000	1,054	68	68
2A	1,001 - 5,000	4,017	64	64
2B	1,001 - 5,000	294	10	10
3	100 - 1,000	31,967	72	51
TOTALS			214	193

* Each stratum contains four replicates.

The sample of communities was divided into two subsamples by taking every other community in each replicate and assigning it at random to either Group 1 or Group 2. Group 1 contains 96 communities and Group 2 contains 97 communities.

Selection of Businesses

The frame that was used for the second stage of sampling was developed by Dun & Bradstreet's Marketing Services Division. They supplied a list of all businesses on file which have the same zip code as one of the 193 sample communities. Where a community had more than one zip code, all zip codes were listed to produce an all-inclusive list. However, since some zip codes contain more than one community, the list contained some businesses which are not in the selected communities. Thus, far more than the 900 to 1,100 businesses were selected to allow for removal of businesses which are physically located outside of the sample community but which have the same zip code and community mailing address as a sample community. This screening was accomplished by telephone.

For Group 1, businesses from communities in strata 1, 2A and 3 were selected with an overall rate of 1 out of 1,373. The sample rates for the 5 communities in stratum 2B each have a different sample rate to reflect the different number of small communities and businesses in each of these states. These sampling rates are given in Table 9.

TABLE 9

Sampling Rates For Businesses
From Group 1 Communities in Stratum 2B

State	Replicate	No. of Communities	No. of Businesses in Selected Communities	Weight*
DE	1	12	81	194.4
ID	3	43	155	1330.0
MD	2	28	78	436.8
ND	4	42	81	[illegible]
RI	2	4	606	[illegible]

*Weight = 0.2 (column (3) x column (4))

For Group 2, businesses from communities in strata 1, 2A and 3 were further stratified into the following two categories:

1. Manufacturing and Wholesale (MW) defined by SIC Codes 20-39, 50, and 51.

2. All Other (AO)

This further stratification was required to insure an adequate representation of manufacturing and wholesale businesses from small communities.

The communities in stratum 2B were not further stratified. The sample rate for businesses selected from communities in stratum 2B was 1 out of 546. For the manufacturing and wholesale sub-stratum a different sample rate was used for each of the three main strata. The all-other sub-stratum was sampled at a rate of 1 out of 1,232. The Group 2 sample rates are given in Table 10.

TABLE 10

Sampling Rates For Businesses From Group 2 Communities

Strata	Sub-Strata	Weight
1	MW	77.5
	AOT	1232.0
2A	MW	62.8
	AOT	1232.0
2B	MW & AOT	546.0
3	MW	444.0
	AOT	1232.0

Mailing Schedule

The schedule for mailing questionnaires to businesses in these groups was as follows:

TABLE 11

SCSS Shipper Survey Schedule

Study Phase	Group(s) Surveyed	Date
Phase I	Group 1	January 1981
Phase II	Groups 1 and 2	July 1981
Phase III	Group 2	January 1982

Phase 1 Responses

A total of 514 questionnaires was mailed out in Phase I, and there was a net total of 374 useable and in-scope questionnaires (Table 12).

TABLE 12

NET USEABLE QUESTIONNAIRES

Total Questionnaires Mailed		514
Out of Scope		
-- out of business/outside community limits	29	
-- non shipper/receiver responses[a]	42	
-- shippers/receivers removed from sample[b]	15	
-- total out of scope		86
Potential Useable Questionnaires		428
Non-responses		54
Total Useable Questionnaires		374

a. Respondents completed Question 1 and returned questionnaire, stating that they neither received nor sent by private or for-hire carriage.

b. Fifteen of the respondents had Standard Industrial Classification (SIC) codes as transportation companies or as city, state or county governments. Because of potential conflicts of interest, these respondents could exhibit an undesirable bias for or against trucking regulations. Consequently they were removed from the sample.

This total of 374 net useable questionnaires falls short of the desired number of 450 to 550 questionnaires aimed for before Phase I began. Consequently, the Group 2 study sample size was increased to try for at least 550 useable questionnaires from Group 2 respondents.

Phase 2 Responses

A second questionnaire was mailed out to all 374 respondents who returned useable and in-scope questionnaires in Phase 1. A total of 288 of these returned the second questionnaire for a response rate of 77%.

A total of 737 questionnaires were mailed out to Group 2 in Phase 2 and there was a net total of 498 useable questionnaires returned. The city, state or county governments appeared to have no effect on the results and therefore were not removed from the Group 2 responses. The 239 non-response questionnaires either were not returned or the respondents completed Question 1 and returned questionnaire, stating that they neither received nor sent by private or for-hire carriage.

Phase 3 Responses

A second questionnaire was mailed out to all 498 Group 2 respondents who returned useable questionnaires in Phase 2. A total of 335 of these returned the second questionnaire for a response rate of 67.3%.

Appendix D

Calvin Beale's Metro Adjacency Codes

CODE	DEFINITION
1	Core or fringe county of SMSA. SMSA population at least one million, 1980.
2	County of SMSA. SMSA population 250,000-999,000 in 1980.
3	County of SMSA. SMSA population 50,000-249,999 in 1980.
4	County with at least 20,000 urban residents, contiguous to an SMSA.
5	county with at least 20,000 urban residents, not contiguous to an SMSA.
6	County with 2,500-19,999 urban residents contiguous to an SMSA.
7	County with 2,500-19,999 urban residents, not contiguous to an SMSA.
8	County with fewer than 2,500 urban residents contiguous to an SMSA.
9	County with fewer than 2,500 urban residents, not contiguous to an SMSA.
0	County unknown or outside 48 contiguous states.

NOTES

1. An urban resident is a resident of a place or township with 2,500 or more inhabitants in 1970.
2. A county is contiguous to an adjacent SMSA if a least 1% of workers in the county commute to the SMSA.

Appendix E

COUNTIES AND POPULATION IN THE UNITED STATES BY BEALE'S CODE

Beale's Code	Number of Counties	Total Population (1980)	Average County Population (1980)
1	183	94,822,038	518,153
2	288	53,803,236	186,817
3	219	21,739,645	99,268
4	165	11,339,921	68,727
5	101	6,689,913	66,237
6	620	16,959,828	27,355
7	654	13,483,019	20,616
8	285	3,239,045	11,365
9	582	4.428,180	7,609
TOTAL	3097	226,504,825	73,136

SOURCES: Fred K. Hines, David L. Brown, and John M. Zimmer., Social and Economic Characteristics of the Population in Metro and Nonmetro Counties, 1970, Economic Research Service, U.S. Department of Agriculture. Agricultural Economic Report No. 272, Washington, D.C., March 1975; U.S. Census Bureau, 1980 Census;

NOTE: The data in the above table was compiled and updated by the Motor Carrier Ratemaking Study Commission. In particular, the Beale's code used by the Commission includes all changes in metropolitan status made between the 1970 and 1980 censuses and changes in population in metropolitan areas that existed in 1970. Comparison of population figures reported in Hines should mote the significant increase in the number of counties that gained metropolitan status.

Appendix F

INTERSTATE COMMERCE COMMISSION BUREAU OF OPERATIONS COMPLAINT ASSISTANCE REPORT	1. COMPLAINT RECEIVED			2. RECEIVING REGION		2a. CLOSING REGION		COMPLAINT NUMBER
	MONTH	DAY	YEAR	REGION	OFFICE	REGION	OFFICE	

3. NAME OF COMPLAINANT

4. ADDRESS AND TELEPHONE NO. OF COMPLAINANT *(if required)* ALWAYS FURNISH STATE AND ZIP CODE

5. TYPE OF COMPLAINANT

☐ A. CARRIER ☐ B. SHIPPER ☐ C. PASSENGER ☐ D. GOVERNMENT ☐ E. OTHER*

6. RESPONDENT'S ICC IDENTIFICATION NUMBER

7. NAME OF RESPONDENT

8. ADDRESS OF RESPONDENT *(if required)*. ALWAYS FURNISH STATE AND ZIP CODE

9. TYPE OF RESPONDENT

☐ A. PROPERTY MC
☐ B. PASSENGER MC
C. HHG MC
  ☐ 1. C.O.D.
  ☐ 2. DOD-G.B.L.
  ☐ 3. NATL. ACT/OTH
☐ D. FRT. RAILROAD
☐ E. PASSENGER RR
☐ F. FRT. FWDR.
☐ G. WATER CARRIER
☐ H. PRIVATE MC
☐ I. EXEMPT MC
☐ J. AGR. COOP.
☐ K. SHIPPER
☐ L. EXEMPT HHG FF
☐ M. SHIPPER ASSOC.
☐ N. SHIPPER AGENT
☐ O. HHG-FF
☐ P. BROKER
☐ Q. PIPELINE
☐ R. OTHER*

10. SMALL SHIPMENTS PROBLEM *(Check one)*

☐ YES

☐ NO

COMPLAINT CODES	11.	J/NJ	NATURE	REASONS			COMPLAINT CODES	11.	J/NJ	NATURE	REASONS		
	1							3					
	2							4					

12. WERE VIOLATIONS AND/OR IMPROPER PRACTICES DISCOVERED ☐ YES ☐ NO

ACTION TAKEN

☐ A. WARNING LETTER
☐ B. ADMINISTRATIVE CONTACT
☐ C. MEMO REPORT
☐ D. REFERRED TO B.I.E.
☐ E. NO FURTHER ACTION REQUIRED
☐ F. OTHER*

ACTION	NAME OF EMPLOYEE RESPONSIBLE FOR ACTION	MONTH	DAY	YEAR	HOURS	MINUTES
13. RECEIVING						
14. CLOSING		15.			16.	

*OTHER *Explain under "Remarks"*

REMARKS:

WORK NOTES

NATURE	REASONS		
A Claims-Loss/Dam B Claims-Incv/Delay C Claims-Other D Rates & Charges E Service F Other	1 Abandonment 2 Accessorial 3 Acknowledgement 4 Baggage 5 Baggage service 6 Bankruptcy 7 Car requirements 8 Claim forms 9 C.O.D. 10 Commodity misdescription 11 Complaint procedure 12 Concealed 13 Consist-trains 14 Credit 15 Delivery 16 Demurrage 17 Denial 18 Depreciation 19 Discrimination 20 Equipment	21 Estimate 22 Facilities-term 23 Food service 24 Fragile 25 Freight priority 26 Improper packing 27 Inside delivery 28 Interchange 29 Interline 30 Investigation 31 Light-bulky shipment 32 Low rated shipment 33 On-board service 34 On-time performance 35 Order for service 36 Overcharge 37 Passenger rights 38 Pickup 39 Processing 40 Redelivery	41 Reservations 42 Residential delivery 43 Schedules 44 Service order 45 Service reduction 46 Settlement 47 Shortage-equipment 48 Small or isolated community 49 Small shipment 50 Smoking 51 Storage in transit 52 Subject to pilferage 53 Switching 54 Tariff concurrence 55 Temperature control 56 Transit time 57 Unauthorized operation 58 Unqualified labor 59 Weigh and reweigh 60 Other*

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Appendix G

REASONS (for the complaint)

1. Abandonment - Involves discontinuance of service over a specified line or route, or closing of facilities.

2. Accessorial - Involves failure to provide accessorial services in accordance with tariff provisions.

3. Acknowledgment - Involves a failure to acknowledge cargo claims within 30 days, or timely acknowledgment of a personal injury claim.

4. Baggage - Involves the loss of or damage to baggage and contents.

5. Baggage Service - Involves the failure to provide adequate baggage service.

6. Bankruptcy - Involves the failure to pay a claim because of bankruptcy (actual or alleged).

7. Car Requirements - Involves failure to provide sleeping car service and other on-board services as prescribed in 49 CFR 1124.20. Does not include 1124.19 complaints.

8. Claim Forms - Involves failure to furnish forms necessary for filing a claim.

9. C.O.D. - Involves failure to observe regulations and/or tariff provisions governing of C.O.D. shipments. (Do not check this item for household goods shipments.)

10. Commodity Misdescription - Involves an improper description of a shipment which results in an improper charge.

11. Complaint Procedure - Involves a rail passenger carrier's failure to post notices of complaint procedures and make Passenger Response Forms available, or failure to respond to a passenger complaint within 15 days.

12. Concealed - Involves any concealed loss or damage property claim; includes claims with household goods carriers for so-called clear receipt complaints.

13. Consist-Trains - Involves failure to provide equipment as prescribed in 49 CFR 1124.14 and 1124.20.

14. Credit - Involves failure to observe credit regulations.

15. Delivery - Involves failure to deliver a shipment as agreed. Does not include complaints concerning extra charges involving inside delivery, redelivery, residential delivery, etc.

16. Demurrage - Involves failure to assess and collect demurrage or detention charges, or dispute over assessment of such charges.

17. Denial - Involves full denial of a claim.

18. Depreciation - Involves reduction in claim value of an article due to age, wear or tear.

19. Discrimination - Involves biased actions by a passenger carrier relating to passenger transportation or use of facilities.

20. Equipment - Involves a motor passenger carrier's failure to provide adequate equipment, or rail passenger carrier's failure to provide equipment as prescribed in 49 CFR 1124.19. (Do not include 1124.20 complaints.)

21. Estimate - Involves failure to comply with 49 CFR 1056.8.

22. Facilities-Term - Involves a motor passenger carrier's failure to maintain adequate terminal facilities, or rail passenger carrier failing to provide or maintain facilities as prescribed in 49 CFR 1124.11, 1124.12 and 1124.13.

23. Food Service - Involves a rail passenger carrier's failure to comply with 49 CFR 1124.17.

24. Fragile - Involves a service deficiency relating to a susceptible damage during transportation.

25. Freight Priority - Involves a passenger train sidetracked or delayed due to freight train operations, or bus express shipments given priority over passengers or baggage.

26. Improper Packing - Involves improper packing by the carrier; includes packing heavy objects in the same carton with fragile materials, or use of excess packing material or cartons, etc.

27. Inside Delivery - Involves charges assessed for inside delivery.

28. Interchange - Involves failure to accept or interchange equipment or interline shipments moving under through routes and joint rates.

29. Interline - Involves cargo claims connected with an interlined shipment.

30. Investigation - Involves failure to investigate a claim.

31. Light-Bulky Shipment - Involves service deficiencies in the transportation of light or bulky shipments.

32. Low Rated Shipment - Involves service deficiencies in transportation of low rated shipments.

33. On-Board Service - Involves conduct of on-board personnel and/or the on-board service. (Other than prescribed by 49 CFR 1124.20.)

34. On-Time Performance - Involves passenger carrier's failure to provide on-time performance; includes rail passenger carrier's on-time performance as prescribed in 49 CFR 1124.6.

35. Order for Service - Involves a household goods carrier's failure to furnish an order for service or to prepare it in accordance with 49 CFR 1056.9.

36. Overcharge - Involves improperly applying a rate resulting in an overcharge.

37. Passenger Rights - Involves a rail passenger carrier's failure to provide a ticket purchaser with a printed statement of passenger rights titled "Adequacy of Service."

38. Pickup - Involves failure to pickup or pickup a shipment on time as agreed.

39. Processing - Involves failure to timely process an acknowledged claim.

40. Redelivery - Involves charges relating to redeliveries.

41. Reservations - Involves a rail passenger carrier's failure to comply with 49 CFR 1124.3, 1124.4, and 1124.5; includes a motor passenger carrier's failure to provide or protect reservations.

42. Residential Delivery - Involves charges relating to residential delivery.

43. Schedules - Involves cancellation or change of scheduled trains or buses without prior public notice.

44. Service Order - Involves a rail carrier's failure to comply with an ICC service order.

45. Service Reduction - Involves a reduction in service.

46. Settlement - Involves an offer of settlement for a claim, usually of a compromise nature.

47. Shortage Equipment - Involves failure to provide adequate equipment to meet or protect loading requirements of a shipper (property carriers).

48. Small or Isolated Community - Involves failure to provide adequate service to a community because of its size or location.

49. Small Shipment - Involves failure to provide adequate service for shipments weighing less than 5,000 pounds.

50. Smoking - Involves a passenger carrier's failure to enforce the smoking regulations as prescribed in 49 CFR 1124.21 for rail carriers and 49 CFR 1061 for motor carriers.

51. Storage In Transit - Involves improper placement of household goods in storage including location of storage facilities.

52. Subject to Pilferage - Involves service deficiencies of shipments subject to theft or filch.

53. Switching - Involves service deficiencies related to industrial switching.

54. Tariff Concurrence - Involves a motor carrier's failure to concur in tariffs with other connecting carriers resulting in a combination rate application.

55. Temperature Control - Involves a rail passenger carrier's failure to comply with 49 CFR 1124.18 and a motor passenger carrier to maintain adequate inside temperature.

56. Transit Time - Involves excessive transit time for shippers of property not including household goods.

57. Unauthorized Operation - Involves the performance of service without proper operating authority.

58. Unqualified Labor - Involves unqualified or insufficient labor being used to pack, load or unload.

59. Weigh and Reweigh - Weigh - Involves the weighing of a shipment, including the failure to furnish evidence of weight when required. Does not include an under estimate of weight of a household goods shipment. Reweigh - Involves failure to reweigh a shipment as requested or required, or involves reweighing charges.

60. Other - Involves other reasons not listed.

APPENDIX H

SMALL COMMUNITY RATE REGRESSIONS

Regression Equation

The model used for obtaining the best fit for the CTS data is

Revenue = a $(\text{weight})^{b}$ exp [c (sq root distance)]

To linearize this equation take logarithms to the base "e" for all terms yielding the following regression equation which was used in the fitting of the CTS data. This functional form was chosen to normalize the error term of the regression.

Ln Rev = Ln(a) + b Ln (weight) + c [sq rt (distance)]

$RV = \text{Constant} + b_1 WT + b_2 DT$

Where:

RV = Ln Shipment Revenue

WT = Ln Actual Shipment Weight

DT = $(\text{actual distance shipped})^{.5}$

To estimate shipment revenues (RV), fitted relationships were evaluated at the grand mean for WT and DT for the various Beale's categories of CTS data. The grand mean was computed for the entire sample for 1980. The mean WT was 6.0074; the mean DT was 25.2608. This translates to a typical shipment with a weight of 406 lbs. and a distance shipped of 638 miles. The estimated amounts of revenue in dollars as shown in column 2 of the Tables H-1 and H-2 were obtained by computing the antilogarithms for the RV's derived from the respective fitted regressions.

TABLE H-1
Fitted Regressions 1976

Geographic Area[1]/	Revenue (t)[2]/	Constant	WT	DT	R^2
O = 1,2,3,4,5	$37.12	- 0.5553281	0.5849376	0.0259531	0.85829
O = 6, 7	$37.95 (-1.834)	- 0.5886690	0.5735465	0.0308549	0.83750
O = 8, 9	$36.24 (0.667)	- 1.408566	0.6756166	0.0372169	0.89267
O = 7, 9	$37.15 (0.051)	- 1.047672	0.6366098	0.0331859	0.89433
O = 6, 8	$38.69 (-2.649)	- 0.3288439	0.5361796	0.0302202	0.80222
D = 1,2,3,4,5	$37.24	- 0.5667807	0.5856644	0.0263625	0.85012
D = 6, 7	$35.82 (3.064)	- 0.6994674	0.5802660	0.0313612	0.83020
D = 8, 9	$38.57 (-1.035)	- 0.5535369	0.5796895	0.0286504	0.80189
D = 6, 8	$36.33 (1.493)	- 0.7875870	0.5860092	0.0340406	0.85637
D = 7, 9	$36.13 (1.840)	- 0.58806	0.5745147	0.0286576	0.80067

See footnotes on page following Table H-2

TABLE H-2
Fitted Regressions 1980

Geographic Area 1/	Revenue (t) 2/	Constant	WT	DT	R^2
0 = 1,2,3,4,5	$54.92	- 0.1337982	0.5802401	0.0258906	0.84891
0 = 6, 7	$53.20 (2.500)	- 0.6869676	0.6410675	0.0320665	0.88254
0 = 8, 9	$49.19 (2.840)	- 1.335832	0.7069591	0.0389822	0.78890
0 = 6, 8	$53.72 (0.345)	- 0.7180585	0.6383227	0.0343334	0.89743
0 = 7, 9	$52.50 (2.553)	- 0.7287351	0.6515551	0.0305805	0.87064
D = 1,2,3,4,5	$54.98	- 0.1790401	0.5865521	0.0262261	0.85143
D = 6, 7	$54.11 (1.237)	- 0.2143990	0.5832438	0.0277818	0.85885
D = 8. 9	$50.96 (1.942)	- 0.0962643	0.5607786	0.0260721	0.83438
D = 6, 8	$55.53 (-0.5515)	- 0.0402989	0.5533777	0.0258267	0.84477
D = 7, 9	$52.64 (2.661)	- 0.3949378	0.6064797	0.0283104	0.93242

See footnotes on page following Table H-2.

Footnotes to Tables H-1 and H-2

[1] O = origin of shipment
D = destination of shipment
Numerals refer to Beale's Codes.

[2] The "t" statistics are calculated using the least significant differences technique to determine the significance of differences between small community shipment revenue and the relevant larger community shipment revenue, e.g. for O = 6, 7:

$$t = \frac{(RV. \mid O = 1,2,3,4,5) - (RV. \mid O = 6,7)}{\text{Standard Error}}$$

Let 1 = subscript for O = 1, 2, 3, 4, 5
2 = subscript for O = 6, 7

Standard Error = Square Root of $S^2 \left(\frac{n_1 + n_1}{n_1 \; n_2}\right)$

S^2 (pooled variance) = $\frac{(S_1{}^2 + S^2{}_2)}{(DF_1 + DF_2)}$

$S^2{}_1$ = Sum $(RV_{1i} - \widehat{RV}_{1i})^2$

$S^2{}_2$ = Sum $(RV_{2i} - \widehat{RV}_{2i})$

Where n = Number of observations

DF = Number of degrees of freedom; e.g., n - 3

i = index for observations e.g.,
i = 1, 2, ... n,

Sum = operator indicating a summation for i = 1, 2, 3, ...

$\widehat{RV}_{1i}$ = estimated shipment revenue (Ln) computed from the regression line for i = 1, 2, 3, ... n, for O = 1, 2, 3, 4, 5

$\widehat{RV}_{2i}$ is computed as above for O = 6, 7.

STAFF REPORT NO. 9
HIGHLIGHTS OF ACTIVITY IN THE PROPERTY MOTOR CARRIER INDUSTRY

Office of Transportation Analysis
Interstate Commerce Commission
July 1983

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PREFACE

This report, like those which preceded it, contains examples of significant alterations in the motor carrier industry which have occurred under the Motor Carrier Act of 1980 (MCA). It is not presented as a definitive analysis of the effects of the Act, but rather as a reporting of activities in the industry as reflected in ICC records, media reports, and direct contact with those involved in motor carrier transportation. It covers the period from July 1982 through June 1983.

INDUSTRY CHANGES AND STRATEGIES

The present world of transportation is remarkably different from that of the late 1970's and earlier 1980's. This new environment was created by carriers' and shippers' responses not only to the MCA and Staggers Act of 1980, but also to relaxed economic regulation resulting from earlier legislation such as the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and the Airline Deregulation Act of 1978, to administrative actions of the ICC and CAB affecting surface and air transport, and to the severe, prolonged recession.

Revolutionary changes continue to evolve. Many far-sighted carriers and shippers attempting to see over the horizon are successfully adapting and prospering, or expecting to prosper with more improvement in the economy. If there is any single reflection of the new world of transport that most commonly pervades carrier and shipper discussions, writings, and actions, it is the energy turned on by the challenges of new opportunity and competition and by the flexibility to choose the strategies for dealing with those challenges.

Property motor carrier and shipper activities and trends discussed in previous reports have continued. New developments compatible with earlier changes have materialized. Highlights discussed in this report include:

- Operating rights granted are declining in number from their peak. They averaged approximately 1054 per month for the year ended in June 1983, down from about 2252 for the first 12 months after the MCA, and similar in order of magnitude to the 1006 monthly average for the second year under the Act.

- Contract carrier and new carrier authorities represent a growing share of authority grants: 28% were contract carrier and 45% were new carrier authorities during the third year of the MCA.

- Independent rate actions reached record highs during 1982: 180,829 in FY 1982, compared to 115,085, 60,000, and 27,141 for calendar years 1981, 1980, and 1979 respectively.

- Rate discounting remained prominent during the third year under MCA but more carriers are marketing a balanced package with equal emphasis on low rates, service, and simplicity of dealing with fewer carriers and tariffs, rather than a disproportionate emphasis on rates.

- Air and package express carriers and LTL carriers are competing to meet a relatively untapped market demand that requires faster delivery than in usual LTL service but slower than express service--at rates between typical LTL and express levels.

- Industry competition from firms with non-union labor has contributed to the downward pressure on rates. Teamster Union members reportedly will receive no increase in take-home wages this year.

- Some shippers have greatly reduced the number of carriers transporting their goods. By mid-1983 Sears had reduced the number of its contract and common interstate carriers from 4,228 in 1980 to 210.

- Logistics, materials, and transportation management workloads and need for professional expertise in planning and operations have risen dramatically as systems options have multiplied under less regulation.
- Financial performance of the regulated motor carrier industry during 1982 was the lowest in its recorded history. The number of carriers filing for bankruptcy was at an all time high.

The rest of this report further discusses these highlights and others, first for motor carriers of property, then for shippers.

MOTOR CARRIERS OF PROPERTY

Marketing and Systems Orientation

Faced with declining industry tonnage, excess capacity, and existing and new competitors that discount rates to capture a share of that tonnage, carriers have found it increasingly necessary to adjust to a buyers' market.

The greater competition combined with more flexibility to modify their systems to meet customer needs has made it practical, even mandatory, for carriers to expand their knowledge of logistics. Such knowledge improves the quality of the carriers' adaptation to change and has made it practical for some carriers to offer planning and logistics systems consultation services to shippers.

Carrier advertising reflects a strong systems orientation, tying the ingredients of beneficial pricing, transportation service, and simplicity of dealing with fewer carriers into a unified service package.

For example, a regional carrier's ad states:

> ..Coverage is so complete you'll find it easy.. without using as many carriers as you might think you need..one phone call gets your computer-generated information in seconds..can help you (reduce costs) by providing sophisticated rate, route, and distribution analysis based on the specifics of your business..

The parent company of a larger carrier established a physical distribution and logistics consulting operation to facilitate its knowledge and expertise in the profession. The Chairman and CEO of the firm has stated:

> ..Increasing competition and emerging new competitors in the highway transportation industry, particularly in contract carriage is evidence of the industry's opportunities..We eliminated the voluminous and inefficient tariff rate manuals..replaced them with a simplified tariff that showed the shipper at a glance the cost to transport any freight, door-to-door between any of the cities we serve.. Using sophisticated computer modeling techniques, we laid out highly cost-effective routes for pickup and delivery in every city we serve. The ultimate benefit of more cost-effective and productive services goes to the consumer in lower prices..

The systems approach has led several carriers to acquire both common and contract authority, and to engage in intermodal transport. Multiple operations and intermodal activities are discussed subsequently under separate headings.

Structure of Operating Systems

Operating systems of carriers have been or are being structured by the use of operating rights, intra and intermodal coordination, and by acquisitions and mergers.

Operating Rights

In the period between July 1, 1982 through June 29, 1983, applications granted for permanent contract, and broker authority have averaged approximately 1054 per month. This is similar in order of magnitude to the near 1006 rate of the second 12 months after the MCA, but sharply below the approximate 2252 rate of the first 12 months after the Act. Authority grants numbered approximately 1844 for FY 1980, 1019 for FY 1979, and 724 for FY 1978.

Of significance is the fact that the percentage of applications granted that is represented by new entrants increased from 11 percent during the first 12 months after July 1, 1980, to approximately 45 percent during the third year under the MCA. The following tabulation identifies, by type of authority sought, the number of applications granted for new and existing carriers during this later period.

	July 1, 1982 to June, 29 1983		
	No. of applications by new carriers	No. of applications by existing carriers	Total
Common Carrier	3516	4713	8229
Contract Carrier	1277	2238	3515
Broker	865	36	901
	5658	6987	12,645

The trend toward dual authority is continuing. During the second year under the Act, contract carrier applications as a percent of all applications granted rose to 27 percent from 16 percent during July 1, 1980 to June 30, 1981. Approximately the same share, 28 percent, prevailed during the third year under the Act. During the latter year, existing carriers accounted for about 64 percent of all contract carrier applications, compared to approximately 53 percent during the second year under the Act. The number of applications granted for broker authority has risen from 603 during the first year under the MCA to 769 and 901 for the second and third years. New applicants accounted for 93%, 94%, and 96% of the grants for the first, second, and third years respectively.

Based on ICC records for fiscal years 1980, 1981, and 1982 the following comparison indicates the growth in number of carriers for each carrier size category.

	No. of Carriers			
Freight Carriers:	FY 80	FY 81	FY 82	% Change during FY 82
Class I	947	1,031	1,144	+ 11.0%
Class II	2,164	2,293	2,139	- 6.7%
Class III	14,610	18,563	22,059	+ 18.8%

The ICC Office of Proceedings reports that 597 nationwide general commodity applications were approved from July 1, 1982 to June 29, 1983. Of these, 103 were filed by new carriers. Seventy percent or 419 were approved during the first half of 1983. This brings the total number of nationwide general commodity authorities granted under the Act to approximately 870.

As of mid 1983, over 900 firms had notified the Commission of intent to perform intercorporate hauling among about 10,000 wholly-owned affiliates.

The grants of dual authority (common and contract), expanded authority, and nationwide general commodity authority have greatly facilitated the implementation of carriers' decisions to broaden operations.

The President of Consolidated Freightways (CF) states that the major impact of reduced regulation has been to allow establishment of new types of business with new customers, as a way out of traffic imbalance problems.

Overnight Transportation Company has taken on transcontinental operations with the addition of new terminals in Los Angeles and San Diego. This is the first step in Overnite's major expansion program relative to its 48 state authority which will be used to expand a 93 terminal system serving the Southeast, North, Midwest, and Southwest.

Additional brief examples of broadening of authority and activities are provided in subsequent sections that discuss intramodal coordination, acquisitions, intermodal transport, and multimodal companies.

Intramodal Coordination and Specialization

New pooling operations are sometimes used to improve efficiency and service. Two Michigan Companies, Hover Trucking Company of Niles, and Parker Motor Freight of Grand Rapids are pooling their talents to transport general commodities. Hover prefers pick-up and delivery service. Parker wanted relief from terminal and peddle run operations and prefers line-haul.

Another example of specialized service is that of a new entrant that serves only one route, using non-union labor, transporting LTL freight, with a cartage agent at one end of a route and a small terminal at the other. An executive of a large motor carrier said that some of its employees with strong market knowledge went on their own for this type operation, cutting rates by 30 percent as a result of low overhead. He said that most such carriers eventually fail in the business, probably because of high damage claims, but that this type of business rises and falls, keeping downward pressure on rates.

Acquisitions, Mergers, and Consolidations

Brief examples of structure transactions planned or implemented are presented to illustrate the nature of actions being taken. A number of firms have set up holding companies to facilitate their expansion and control.

In a significant development that involves intermodal transport, Consolidated Freightways, Inc. (CFI) is planning to acquire Air Express International, the largest international air freight forwarder in the U.S. CFI expects the international business of AEI to complement its domestic operations. Air Express International has headquarters in Connecticut plus a reported 140 offices in 35 countries, in Europe, Africa, New Zealand, Australia, the Far and Mid East, and Latin America. Its airline subsidiary, Air Express International Airlines, operates in direct service between major international airports in the U.S. and Europe. Services include express delivery of small packages and courier service, as well as transport of large shipments.

Two large carrier subsidiaries of IU International Corporation are scheduled to merge in July 1983. Ryder Truck Lines of Jacksonville, Florida and Pacific Intermountain Express (P-I-E-) headquartered near San Francisco will combine operations to form a single transcontinental operation, Ryder/P-I-E Nationwide, Inc. to be based in Jacksonville. Combined annual revenues are expected to exceed $1 billion, placing the new organization second to Roadway, the largest general commodities carrier. Ryder and P-I-E are currently the sixth and ninth largest carriers respectively.

Company executives state that the MCA made it possible for Ryder and P-I-E to obtain nationwide operating authority. They point out that the combination of broader authority, marketing appeal of single carrier service, and shifting of population and production centers which favors the flexibility of motor carrier distribution, led to the decision to merge. The new organization will have more than 400 terminals compared to Roadway's 500 plus terminals.

TNT Pilot (formerly Pilot Freight Carriers) of Winston Salem, North Carolina announced in January 1983 its agreement to acquire Schuster Express of Connecticut. Pilot operates a general commodities service in about 18 states along the East coast, and a special commodity division with 48 state authority. Schuster's operations consist of general commodity transport in 12 Mid-Atlantic states, Washington, D.C., and New England states, plus freight interlining to and from Canada. Operations of the two companies are said to be complementary rather than duplicating. Combined 1982 revenues for the firms were approximately $191 million--$150 million for Pilot and $41 million for Schuster.

The final example concerns the purchase of three motor carriers by Convair Corporation, a new minority-owned business headquartered in St. Louis. The three carriers are McBride's Express, FMS Transportation, and Kelmac Cartage Company--previously operated by the seller, Chromalloy American Corporation.

McBrides is an Illinois based general commodities common carrier serving Illinois and Missouri under regular and irregular route authority. Several other states are served under contract carrier authority. FMS, an irregular route general commodities carrier holding 48 state authority, was originally the intercorporate hauling division of Chromalloy. Kelmac Cartage Company is a local St. Louis carrier that serves Sears Roebuck and other companies in the vicinity.

Numerous carriers have set up or are seeking to establish a holding company to facilitate achievement of market objectives. They include Burlington Northern, Carolina Freight Carriers Corporation of North Carolina, Yellow Freight System of Kansas, and Preston Trucking Company of Maryland. Typical of their objectives are those expressed by Preston, "to improve its return on capital by expanding its operations either by acquisition or merger into growth markets beyond the ones currently served".

The next section of this report on intermodal transportation provides additional insights regarding the importance of organizational structure to expansion of intermodal activities.

Intermodal Transportation

During 1982 when total Class I rail carloadings declined by 14.2% from 1981, piggyback carloadings rose by 9.9%. Conrail's fruit and vegetable piggyback traffic from the West Coast rose by 50% in 1982. The piggyback accelleration has continued. For the first 23 weeks of 1983, TOFC/COFC carloadings were 19.1 higher than the same 1982 period, according to the Association of American Railroads.

The impact of exempted intermodal activity on motor carriers is broad. Competition by piggyback is especially strong in long-haul markets. The ease of obtaining operating authority has opened up new opportunities by increasing the geographical area within which a motor carrier can move goods to and from piggyback terminals or other interline points. The expansion by larger carriers of terminal networks and acquisitions, mergers, and consolidations has resulted in new competition for numerous carriers. Some regional motor carriers faced with new competition are extending their reach by linking with piggyback or other modes, and joining forces with other small motor carriers that can pick-up and deliver in more distant markets than those previously served.

The Executive Vice President of marketing for Norfolk Southern states that piggyback is probably the most competitive area of the business. Piggyback is second to coal in number of industrywide carloadings. A Conrail executive indicates that piggyback is moving into the 20 or 30% range as a share of revenues. The President of Union Pacific calls piggyback's profit margins paper-thin. Conrail's Marketing Vice President emphasizes the price-sensitivity of piggyback traffic.

Numerous types of action have provided a continued upward impact on the growth trend for piggyback and other intermodal transportation.

Smith's Transfer Corporation of Staunton, Virginia contracted with Pan American World Airways to transport air freight from 36 Eastern states to Pan Am cargo terminals in New York, Miami and Houston, effective January 1983. Sales staffs from both firms sell the joint service which utilizes Smith's 140 terminals. The shipments move to and from 40 countries on 6 continents. Smith's is a subsidiary of ARA services.

Preston Trucking Company, an LTL carrier based in York, Pennsylvania, serves 20 states from points bounded by Massachusetts to the North, Virginia to the South, and St. Louis to the West. Preston began a joint venture in 1982 with Votainer, a non-vessel operating common carrier that is a subsidiary of a Rotterdam based shipping company. Regular sailings are made from Baltimore, or New York if necessary, to Europe, the United Kingdom, South Africa, and the Far East. Preston transports LTL freight from shippers to its York, Pennsylvania consolidation center where containers are stuffed and moved to Baltimore or New York piers. A shipper reportedly can arrange for point-to-point shipments with a single phone call.

CF Forwarding, Inc. (CFFI) is a new subsidiary of Consolidated Freightways, operating with 48 state authority. CFFI's initial operations are planned with terminals in Chicago, Seattle, San Francisco and Los Angeles. Line hauls will be performed by railroads under contract. Door-to-door service will be achieved using local cartage operators. Full volume trailer and container service is offered. The objective of Consolidated is to improve its competitive position in long-haul markets.

Improved piggyback rail service and lower rates achieved since deregulation of the service has made piggyback (land-bridge and mini-bridge) an even more popular alternative to the Panama Canal. The American President Lines (APL), based in Oakland, California, is an ocean carrier that favor piggyback. Shipments packed in containers and loaded on trailers move locally or for short distances by truck to or from TOFC/COFC facilities. From there, a train reportedly makes the trip from Los Angeles to New York in 80 percent of the usual rail time.

Trailer fleets of perishable Plan III operators increased from about 1000 trailers in 1980 to 5800 by the 1982 summer shipping season. An estimated 75,000 to 80,000 trailer loads of perishables moved by Plan III in 1982, resulting in an approximately equal number of dry freight moves in the opposite direction. Perishable Plan III operators are primarily forwarders of exempt agricultural commodities. They furnish refrigerated trailers and provide door-to-door, single bill of lading service to shippers and receivers of perishable commodities. Most of this traffic moves on annual volume contract rates.

The obligation to provide high rated dry commodity return loads has contributed to the extensive use of shippers' agents and associations, co-ops, and forwarders to generate traffic for piggyback return hauls. The Association of American Railroads reported that the percent of piggyback traffic, including mixed freight, handled by these third party middlemen has risen from 40 to 80 percent.

The RoadRailer, intermodal trailers with wheel sets for both rail and highway use, has found several applications. The trailers offer fast transfer between highway and rail modes. One service which began in late 1982 is between New York City and Buffalo. Each route which utilizes the RoadRailer requires a specified number of loads as a break-even point. The RoadRailer is marketed by the RoadRail Transportation Company which is a part of the Tiger International system.

Some railroad executives have expressed concern that the longer trailers authorized in the late 1982 tax legislation may have a serious negative effect on piggyback traffic, if motor carriers exploit the new flexibility which raises the maximum trailer length from 45 to 48 feet. Current flatcar fleets are built to accommodate no more than one 40 foot and one 45 foot trailer.

Multimodal Transportation Companies

Multimodal companies are very much a reality. There are no total transportation companies in the U.S. that operate all modes, but the trend toward integration of ownership continues. In addition to types of ownership previously described, there are air freight forwarders that own airlines and visa versa, and ocean carriers that own trucking companies. Norfolk and Western Railway controls Piedmont Airlines. Southern Pacific owns a motor carrier, barge line, air freight forwarder, and coal slurry pipe line. Consolidated Freightways also controls an ocean carrier.

A Commission policy statement made in January 1983 established new rules to promote intermodal transportation, in accordance with MCA objectives. The rules authorize railroads to establish motor carrier subsidiaries without former restrictions that required the trucking service to be auxiliary or incidental to a rail movement. The policy should be a stong impetus to multimodal ownership. The motor carrier industry has filed suit to challenge the new rules. The suit is pending before a U.S. Court of Appeals.

The high level of activity regarding acquisitions, mergers, and consolidations, and the increase in intermodal transportation has led to recent hearings by the Senate Commerce Committee to investigate issues related to the formation of multimodal transportation companies.

Rates and Services

The number of independent rate actions taken in bureau tariffs and publication of individual tariffs has skyrocketed, reflecting increased competition. The number of independent rate actions for ten major rate bureaus rose to 180,829 during FY 1982. The number for calendar year 1981 was 115,085, up from 60,600 in 1980, and 27,141 in 1979. Rate bureaus are no longer required to report the number of independent actions.

The Zone of Rate Freedom (ZORF) provisions of the MCA have still had few applications. United Parcel Service used the provisions three times prior to May 1983 and announced intentions to use them again. Most carriers have preferred taking independent rate actions rather than using the ZORF flexibility. The Commission recently announced its rulemaking proposing to increase the ZORF upward and downward flexibility from 10% to 15%.

Simplified tariffs offering base rates purported to be as low or lower than competitive discount rates have been developed. Leaseway Express, a unit of Leaseway Transportation Services offers rates based solely on distance, density, and weight. Leaseway Express uses no freight classification and belongs to no rate bureaus. It's rates are advertised as being as much as 30 percent below those of competitors.

Georgia Highway Express uses a simplified rate system in certain areas. For Texas, the system reduces all freight to class 100 or less and multiples of class 100. All rates can be listed on a single page.

Pilot Freight offers a "do-it-yourself pricing kit". Rates are based entirely on destination state and weight, without aggregates, discounts, or freight classifications. Pilot has found that some shippers prefer discount rates rather than low base rates from simplified tariffs. As a result, Pilot offers standard tariffs and discounts to shippers that are more comfortable with "discount rates".

Earlier this year, a zip code system for tariff basing points was implemented by the Eastern Central Motor Carriers Association. Shipment origins and destinations are broadly grouped according to zip code. The tariff system applies to all LTL and TL class and commodity rates and charges, but does not apply to arbitraries, pick-up and delivery charges, or point-to-point commodity rates. The rate bureau boasts that the system is "the most revolutionary change in tariff publishing the motor carrier industry has ever witnessed".

More motor carriers are marketing a balanced package with equal emphasis on low rates, service, and simplicity of dealing with fewer carriers and tariffs. Even so, rate discounting continues to rage. It appears that most discounts range from 10 to 20 percent with some ranging to approximately 30 percent.

Industry excess capacity is estimated by the American Trucking Associations to be approximately 40 percent. As stated by one carrier executive:

> General overcapacity is the nemesis of stability; it's as simple as that. A small carrier enters the market; in order to get a

> foothold in it, it "drags" rates down; the major carriers follow, ever though a small segment may be affected; competition converts to conflict; profitability goes out the window; everybody loses but the shipper.

There are a large number of new carriers taking such initiative. However most new carriers seek volume traffic. Much of the discounting has been by well established less-than-truckload carriers, as a direct result of the recession and the associated decline in overall tonnage, and rise in excess capacity.

The characteristics of discount pricing are essentially the same as those prevalent during the first two years under the MCA. For the most part, discount rates have been directed toward specific types of shipments or groups of shipments. Multi-tender discounts, volume based discounts, and directional flow discounts have been the most common of the programs. There are also the service oriented programs which give discounts where service commitments are not met. Reduced service, primarily dock deliveries in lieu of pickup service are also in existence.

Because the characteristics of discount pricing have continued, only a few illustrations are given to supplement those in previous reports.

Smith's Transfer Corporation's piggyback service from eastern states to California, which began in January 1983, was described under "Intermodal Transportation". The service was promoted by a 45 day introductory tariff which offered a 25% discount on all minimum charge, less-than-truckload, or any-quantity class rated traffic. Other piggyback discounts include directional flow discounts on iron and steel products, designed to divert traffic from single mode motor carrier movements.

Several railroads have increased piggyback rates during 1983, primarily for general merchandise commodities. Competition from other railroads and motor carriers have reportedly caused some of the rate increases to be rescinded. Contract and perishables' rates have generally been unaffected.

Mercury Motor Express, avoids the word "discount", and established a 20 percent across-the-board "reduction", as part of its market strategy. Mercury is a non-union carrier and believes the word, "reduction", conveys the idea to shippers that it is a carrier with lower costs.

The high level of competition was highlighted when the Central States Motor Freight Bureau cancelled a 4.4% overall rate increase that became effective in November 1982. One-fourth of the Bureau's carriers flagged out. They accounted for approximately 60 percent of the membership's total freight volume. The Commission in January 1983 allowed the Bureau to substitute a lower overall increase of 1.9%.

General rate increases became effective on April 1, 1983 for the nine major rate bureaus that filed rate increases to offset the April 1 cost-of-living adjustment for Teamster Union members, in accordance with the National Freight Agreement. The increases were also formulated to offset higher wages and benefits for non-Teamster employees, higher non-labor expenses which include the new April 1, 1983 five cents per gallon fuel tax increase, and higher social security payments. No increase was proposed by the Niagara Frontier Tariff Bureau.

General rate increases were approved, effective April 1, 1983, for nine major rate bureaus. Average increases for individual bureaus ranged from 4.6 to 6.6. percent. Restructuring is reflected by the fact that increases range from 6% to 10% on LTL weight brackets specified as 2000 pounds and under, 1000 and under, or 500 and under. Rate increases on truckload quantities were 3%, with the exception of two rate bureaus,-one of which had a 2% and the other a 5% increase.

Carolina Freight Carriers Corporation, in stating that it would not participate in general rate increases proposed last year by three rate bureaus, said it does not make sense to increase rates and then institute discounts to show customers they are saving money when this is not the case. However, the non-participation did not have the expected effect of reducing the number of requests to Carolina Freight for rate reductions. Accordingly, the carrier now participates in all general rate increases. An executive of the firm advises that the number of requests it receives from shippers for lower rates is about double the number of six months ago.

Labor and Productivity

The wage freeze, uncapped cost-of-living adjustments (COLA), and work rule concessions in the 37 month National Master Freight agreement, effective March 31, 1982 have been of inestimable value to motor carriers attempting to stay afloat during the recession. The concessions alone have not brought the unemployed Teamsters back to work but undoubtedly have made it possible for many carriers to stay in business. The Teamsters' President has reportedly met recently with the trucking industry's bargaining organization, Trucking Management, Inc., and proposed wage concessions to help carriers with union employees regain truckload traffic lost to non-union truckers.

Hemingway Trucking of Massachusetts was one of approximately 200 small to medium size motor carriers that bargained independently and sought greater concessions than those in the National Agreement. The Teamsters continued to bargain until June 1982 before they struck Hemingway's operations. The strike and the inability to obtain the needed concessions forced Hemingway out of business. Teamster leaders have argued that if a company like Hemingway gains concessions greater than those in the National Agreement, other employers would renege on the Agreement.

TIME-DC, a major carrier that discontinued general commodity operations after 3000 employees struck on April 1, 1982, began rebuilding those operations in early 1983. The carrier has stated that the Teamsters have agreed not to strike the new operations for a period at least equal to the strike's duration of eight months. Pre-strike hourly wages were reported to be $12, with wages in the renewed operation pegged at $9 per hour.

TIME-DC was the single major nationwide motor carrier that chose not to participate in the National Master Freight Agreement.

The entire COLA of 33 cents an hour, effective April 1, 1983, has been diverted by the Teamsters to maintain the current level of health, welfare, and pension benefits. Teamster members will receive no wage increase in 1983.

Improvement in productivity is a major goal of the trucking industry. Recent legislation, the DOT Appropriations Act, committed Federal money to highway improvement and made it legal for wider trailers (102 inches) to operate on interstate and other designated highways. The Surface Transportation Assistance Act of 1982 allows longer trailers and twin-trailers, raises Federal fuel taxes by 5 cents per gallon, and imposes heavy use taxes on large trucks. The impact of the new taxes is estimated by DOT to increase total costs of operating large trucks by less than one percent. The tax provisions caused the 11 day owner-operator strike that began in late January 1983.

DOT has estimated that the wider and longer trailers will reduce costs for the trucking industry by approximately $5 billion over the next two years as follows:

- Elimination of barrier state limits	$830 million
- Use of western doubles in the East	2,310 million
- Increased trailer lengths	850 million
- Increased trailer widths	950 million

Additional productivity gains are expected from improved highway and bridge conditions, as a result of better operating times, fewer detours and low limit bridges, and decreased maintenance costs.

The overall length limit for semitrailer combinations was increased from 55 to 60 feet. Legal maximum trailer length for single trailer service increased from 45 to 48 feet. The maximum is 28 feet when operating in twin-trailer configeration. A vice president of a large trucking company believes the twin-trailers will become popular among common carriers. He states that they work well with decreased payloads because they can be separated at their destination, permitting each trailer to be used to peddle freight. The six inch increase (to 102 inches) in width limit, however, tends to restrict the local use of such trailers.

Efforts to improve productivity for the industry always included greater fuel efficiency as an objective. The "former world record" of 7.63 miles per gallon for heavy trucks set by Preston Trucking has been surpassed. International Harvester claims a 1982 "new world record" of 8.26 miles per gallon set by a new conventional highway tractor. The record was achieved during an independently monitored coast-to-coast fuel test.

Independent Truckers

The 11 day strike by the Independent Truckers Association (ITA) which began in late January 1983 did not seriously disrupt the flow of goods. The ITA President said the strike had accomplished, for the entire industry, "more than we have ever been able to in the past". He was referring to a written expression of concern, signed by 40 members of Congress, and a promise to look at the new tax laws which scheduled increases in federal fuel taxes and highway user fees. The strike reportedly produced damage to thousands of trucks, 638 shootings, 66 injuries, and one death.

During the shutdown, an estimated 80 percent of all trucks continued to move. Service disruptions by common carriers rarely, if ever, lasted more than one or two days.

Owner-operator applications for general commodity operating authority have continued since May 1982 to be filed at about the same low rate as for earlier periods under the MCA. As of March 31, 1983, 540 decisions had been served to owner-operators since July 1980. All were granted but seven which were dismissed.

The March 9, 1982 decision [Ex Parte No. MC-122 (Sub-No. 2)] by the Commission to allow private carriers to lease trucks and drivers from a single source owner-operator is still under a court stay.

The fuel cost reimbursement program initiated by the Commission as part of the settlement of the 1979 strike by independent truckers ended July 23, 1983. A U.S. Court of Appeals ruled that the Commission has no authority to require carriers to reimburse owner-operators as stipulated in the regulations. The ruling does not apply retroactively. The Commission plans to continue monitoring and publishing fuel prices to assist voluntary carrier reimbursement to owner-operators. The American Trucking Associations has advised the Commission that voluntary fuel pass-throughs by carriers will continue.

Annual incomes of individual truck drivers during 1982, according to tabulations of a survey conducted jointly by Data Sciences, Inc. of California and Road King magazine, were expected to approximate the following.

Annual income	Percent of Respondents
less than $20,000	23%
$20,000 - $30,000	35%
$30,000 - $50,000	30%
above $50,000	12%

About half the drivers responding were independents, and half were fleet drivers. Of the independents, those operating under contract to regulated carriers slightly outnumbered those transporting exempt goods. Twenty percent of the exempt drivers and 39 percent of the contract-lease drivers expected to earn $45,000 or more in 1982.

The 1982 survey found that a primary concern of independent operators is the rise in equipment and financing costs. The average cost of a standard, no frills tractor had risen to more than $55,000, up from the 1976 average of about $31,000. Results on a similar 1983 survey are expected to be available around August 1983.

Small Shipments

Fierce competition has developed among carriers that are trying to increase or maintain market share, or gain a foothold in the relatively untapped market for second or third day delivery of small shipments primarily, but also of some larger LTL shipments.

The Chairman of Airborne Freight Corporation stated in October 1982:

> Larger truckers and consolidators have suddenly realized that they can take less-than-truckload freight and move it around the United States on a regular schedule, with second or third day delivery, at a price higher than LTL but less than air freight....Airborne is negotiating rates "hourly".

Many of the same companies competing in the fast growing overnight express market have recognized that shippers often prefer to pay less and accept slower second or third day delivery. They are currently offering, or moving into, that level of service.

Much newly instituted second and third day delivery service is still achieved by air-truck or rail-truck service, but single mode motor service continues to pursue this market. Either way there appears to be substantial potential for growth of trucking in the market.

Quikasair Express (QE) is a subsidiary of Thomas Nationwide Transport (TNT), the Australian transportation conglomerate that also controls TNT Pilot. QE launched U.S. operations in the Fall of 1982, offering scheduled, guaranteed second day delivery between New York and Chicago, with plans to expand the two day delivery to many cities. Cleveland was added in February 1983.

QE's service is entirely by truck. Average shipments have approximated 1500 pounds. QE has a three-year plan to get into the top 30 U.S. industrial markets. Tractor-trailers run six days a week, regardless of load factor, to assure that QE keeps its commitment to shippers. Rates average about 20 percent of air freight rates, according to QE. About 60 percent of the business comes from surface and air freight forwarders. The service has been developed extensively by QE in Canada, Australia, Brazil, Switzerland, and New Zealand.

Profit Freight Systems (PFS) was one of the first to recognize the market potential for second and third day delivery. PFS offers air/truck service to 25,000 points in the U.S. and does business with 500 to 1400 motor carriers everyday, according to PBS's Senior Vice-President for Corporate Development. Trucks make the extensive network possible.

United Parcel Service (UPS) has an established second day service called "UPS 2nd Day Air" (formerly Blue Label Air). UPS claims that about 99 percent of the shipments meet the second day promise. A new "UPS Next Day Air" offers no guarantee on overnight delivery. The lack of a time-of-day delivery promise makes it possible to transport many next day packages on UPS regular truck routes.

Purolator Courier believes the overnight documents business will have a limited life, because of the possibility of eventual electronic transmission. The firm is gearing long-range plans to include second day package delivery and expansion into longer haul markets.

The second day market, called "extended delivery" by Purolator, is expected to generate as least as much business as its existing overnight business. Purolator believes there is tremendous potential in this market for under 70 pound shipments now moving in less-than-truckload service. Plans are to operate with a single mode truck service, using a system of "Super-hubs". Purolator's Canadian subsidiary has successfully operated the extended delivery service for about two years.

Burlington Northern Air Freight has plans for an extensive air/truck service aimed at 50 to 1000 pound shipments moving in single mode LTL service. Plans are to build the service around 11 hub cities.

Amtrak has expanded its new "Package Express Service" begun in 1982. In January 1983, Amtrak announced that the service is offered in 55 cities in 44 states, with the ability to reach 4,000 adjacent communities.

The service is aimed at industrial and manufacturing shippers and the 50 to 100 pound market, but is capable of handling shipments up to 10,000 pounds. The service offers pickup and overnight delivery between destination cities, a money-back guarantee, instant tracing, and a single monthly billing. Though service is overnight, it is expected to compete with carriers offering first, second, or third day delivery. Pickup and delivery is by motor carriers under contract with Amtrak. The service is described by Amtrak's Manager of Special Sales as "a bit better than truck at a cost less than air".

Private Carriers

According to the Private Carrier Conference, there wereat least 150,000 private carriers on July 1, 1980 when the MCA became effective. Traffic Management magazine reported an estimate of 130,000 as of 1982. Information from the National Motor Transport data base indicates a continuing decline in the number of trailers moved in private carriage, as a percent of all trailers transported, as follows:

Time Period	Trailers Moved in Private Carriage as a Percent of All Trailers
1979 - 1st 6 months	22.5%
1980 - 1st 6 months	16.5%
1982 - 1st 9 months	12.0%

There have been many additions to and subtractions from private carriage traffic volume as a result of new considerations. Some of these favor more private carriage. Others argue for less.

The variety of conflicting opinions by shippers regarding the extent of shifts to or from private carriage under the MCA led to a 1982 survey of Traffic Management readers involved in private carriage. Survey findings were published in August and September 1982 issues. Survey results indicate that over the previous three years:

> 53. 2% of the shippers using private carriage increased their use of it, with more beneficial rates and costs given as the primary reason by about 30% of the shippers. Improved service and convenience were the major reasons by the others.

> 12.7% had switched a substantial volume of traffic from private to contract carriage.
>
> 15.2% had opted to use motor common carriage for most of their traffic.
>
> 10.1% had switched many shipments to rail piggyback.
>
> 8.8% of respondents indicated no significant change toward more or less private carriage.

The trade journal plans to conduct a more comprehensive survey during the Fall of 1983.

A 1982 survey of shippers by Distribution magazine concluded that most shippers using private carriage are solidly committed to their fleets, and are reluctant to make a major commitment away from private carriage because of uncertainty that the "fire sale" rates of regulated carriers will last.

The lower rates and improved service, sometimes guaranteed, offered by common and contract carriers have provided powerful incentives for many shippers to consider shifting traffic from private carriage. Quality of service has always been identified as the primary reason for most private carriage, although shippers compare rates and charges of regulated carriers with private carrier operating costs, and with charges by the company fleets to their shipping divisions or subsidiaries.

A company that has chosen to abandon private carriage is Bristol-Myers Company, a firm with over $3 billion in annual sales, 55 percent of whose tonnage moves in LTL shipments. Their director of corporate transportation has stated:

> Our private fleet is very small and getting smaller, what's left will be gone before too long. The need for them is just not there. Irregular route common carriers have been too competitive with the costs of a private fleet.... If trucking rates get too high, then the private fleet would be a viable alternative.

The MCA in conjunction with prior ICC actions has produced increased potential for improved economies in private carrier operations. The greatest impacts are on equipment utilization and payload factors. Compensated intercorporate hauling (CIH) among corporate parents and 100 percent owned subsidiaries may be performed in conjunction with supplemental, regulated carrier (TOTO type) or contract carrier operating authority to improve load factors in any direction of travel.

The February 1982 decision by the Commission to allow single source leasing by private carriers of owner-operators and their equipment [Ex Parte No. MC-122 (Sub-No. 2) Lease of Equipment and Drivers to Private Carriers], and the November 1982 decision to permit private carriers to trip lease trucks and drivers to regulated carriers [Ex Parte No. MC-43 (Sub-No. 12) Leasing Rules Modification] have been hailed by private carriers. They contend that the flexibility made possible by these decisions would, in combination with CIH, TOTO type authority, and contract carrier opportunities greatly increase control over efficiency of private carrier operations and increase their ability to meet or beat common carrier rates. Both leasing decisions have been stayed, pending review by the United States Court of Appeals for the Eleventh Circuit.

The trip-leasing decision in Ex Parte No. 43 (Sub-No. 12) has been acclaimed by the managing director of the Private Carrier Conference as, "the hottest thing that has yet come along for private carriers", because of its potential to reduce empty miles. The executive director of the Private Truck Council of America stated, "I don't believe we will see anything come out of the Congress or Commission that will be more important than this decision".

International Issues

The Bus Regulatory Reform Act of 1982 dealt with the issue of reciprocity and fairness by Canada and Mexico concerning their policies and practices in granting authority to U.S. motor carriers. The Act contained a moratorium provision barring the Commission from issuing new U.S. operating authority to Canadian and Mexican carriers for two years, unless the President determined the moratorium to be unnecessary.

In February 1982, the Commission began an investigation into the alleged Canadian discrimination against U.S. carriers and the lack of uniformity in entry requirements. The Commission in October 1982 issued its finding that Canada does not employ its more restrictive motor carrier regulations to discriminate against U.S. carriers. In November the President completely lifted the moratorium imposed in the bus legislation on Canadian-owned or controlled carriers. The Canadian government and the Commission followed by acting swiftly on applications that had been delayed until the issue was settled.

The U.S. moratorium is still in effect for Mexican applicants. Mexico's consititution prohibits foreign owners from securing operating authority in that country.

Financial Performance

The excess capacity created by the overall decline in tonnage and the influx of new carriers continued to have an adverse impact on industry financial performance throughout 1982. The excess capacity and low tonnage remain as serious problems in 1983. These problems and carriers' responses to them have shaped the competition, market strategies, and financial performance during the recession.

Financial performance of regulated, interstate carriers during 1982 was the worst in the recorded history of the industry, followed by 1960 and 1981 respectively, according to the American Trucking Associations (ATA). The Commission's Bureau of Accounts report comparing 1982 and 1981 performance of the nation's largest motor carriers confirms the poor results as follows:

	100 carriers* (not including UPS)	
	1982	1981
Tonnage	down 11.3%	--
Operating ratio	98.7%	96.7%
Return on equity	2.2%	11.1%

*The 100 carriers account for approximately 44% of revenues of around 3,000 Class I and Class II regulated carriers.

The report shows that fourth quarter 1982 tonnage was down 7.7% from a year earlier. For the year 1982, 70% of the 100 carriers reported declines in operating revenues; 81% had declines both in tonnage and net carrier operating income.

A report of the American Trucking Associations shows tonnage changes in 1982 compared to 1981 as follows:

No. and Type carrier	Tonnage Change in 1982
274 Carriers of general freight	down 10.6%
213 Specialized carriers	down 11.0%
10 Household goods carriers	down 1.1%

An ATA analysis of Class I and Class II carriers (excluding UPS) indicates that during the first quarter of 1983, 270 general freight carriers experienced a tonnage drop of 1.4%, 218 specialized carriers reported a 2.5% drop, and 12 household goods carriers reported an 4.6% tonnage increase--compared to the same 1982 period. The general freight and specialized carriers, as groups, reportedly showed small profits. A recent ATA statement indicates that May 1983 tonnage for Class I and II cariers of generl freight was almost 6% above May 1982 and about 2.2% above April 1983.

January 1983 and September 1982 reports by the American Trucking Associations (ATA) observed that there had been some abatement in the pace of closings of ICC-regulated motor carriers, and in the appearance of problem carriers. However, an April 1983 ATA report noted a surge since those reports, in the number of closings and problem carriers. The April report shows that from mid-1980 to mid-April 198~~0~~3:

232 carriers had apparently permanently closed their doors.

68 carriers were reported to be operating under Chapter 11 of the Federal bankruptcy statutes and/or have voluntarily reduced or suspended their operations.

Of the 68 alive but financially troubled carriers, 5 were reported to have annual revenues exceeding $100 million each.

The ATA data reflect only motor carriers with an established "presence". They do not include small, newly formed carriers closed down shortly after organization or, insofar as ATA has ascertained, carriers purchased by or merged into other firms.

The report shows data for the out-of-business carriers, according to carrier class, that indicates the following:

Out-Of-Business Motor Carriers

Carrier Class	No. of Carriers	Jobs Lost Expressed as % of Total	Revenues Lost Expressed as % of Total
I	49	78.8%	80.1%
II	42	9.9%	10.5%
III	141	11.3%	9.4%
TOTALS	232	100%	100%

An executive of Yellow Freight has expressed the belief that of 15 to 20 larger firms that offer LTL service, only about a third will survive.

Chase Manhattan Bank's 1982 Financial Analysis of the Motor Carrier Industry states:

> The economic outlook for 1983 indicates that the motor carrier industry should not anticipate brighter days until the second half of 1983....Investment in revenue equipment has understandably been low....By mid-1983, therefore, equipment should be in

> need of replacement....Analysis will conclude that cash flow is adequate to service existing debt. However, obtaining additional financing--for higher priced equipment--on a track record of two years of poor earnings may be difficult for many carriers....
>
> ....All companies (excepting the strongest and most lowly leveraged) should anticipate that banks will request security for their loans. From a lender's viewpoint, MEPPAA (Multi-Employer Pension Plan Amendment Act) is perhaps the most serious issue to confront the trucking industry in recent times, including the changes brought about by the Motor Carrier Act of 1980.
>
> ....Auto production dropped to a 25 year low early in 1982, and major basic industries such as steel, machinery, and rubber are closing plants permanently. Bankruptcies in 1982 have reached levels not experienced in this country since the Great Depression.

Dun and Bradstreet reports that 25,346 businesses (all types) folded during 1982, a 100-percent increase since 1980.

The Managing Director of ATA's Contract Carrier Conference commented during December 1982 on successful carriers: "For all the basket cases, there are carriers tripling and quadrupling revenue. Usually these are the smaller carriers who are very price-competitive, who have cut their costs to the minimum, especially in terms of labor costs".

The Chairman of Leaseway Transportation Corporation stated early in 1983 that the organization's full-service leasing business is a fairly sensitive indicator of general economic improvement because it serves a wide range of industries across the country, with revenue related to miles driven. He said, "Miles driven have stopped going down, but they haven't turned up". A Leaseway executive advises that there has been some spotty improvement in the number of miles driven during the past two months, but that it is too early to know if there will be a continued upward trend. Leaseway and many other carriers, particularly those with strong resources and market strategies that are making the most of the flexibilities made possible by the MCA, are optimistic concerning financial performance and opportunities for 1983.

SHIPPERS

Logistics Objectives and State-of-the Art

Logistics objectives, strategies, and operations are typically planned and implemented in accordance with broader objectives for profit and market share. Activities include selection and location of market channels; setting customer service standards, inventory management, materials flow and handling, packaging, loading, bracing, transportation, warehousing, and coordination with or control of production lot sizes and pricing. The trend for the past three decades has been toward greater consolidation, control, and coordination of logistics responsibilities.

Logistics strategy seeks for each customer service level offered to minimize the sum of inventory holding and inventory acquisition costs, thereby necessitating consideration of a large number of cost and service tradeoffs.

Though sound logistics objectives are not new, abilities to optimize tradeoffs have been strongly affected by competition under the MCA and by technological advances in facilities, equipment, and processes--particularly in the area of computers and systems programming and analysis.

The state-of-the-art for developing and analyzing information relative to market research, establishing objectives, strategies, and systems, and performing operations is already developed to a high degree and is improving.

Sears Roebuck and Company has a highly sophisticated computer system for logistics planning, analysis, and operations. A "Facility Optimization Model" is used to look at stores and distribution facilities and assign stores to achieve the best distribution pattern. A "Channel Selector Model" compares rates and modes and assists planning for the most cost effective operation for shipping. A "Transportation Management Model" tracks all tariffs to and from various destinations and determines the most economical operation. An "Inventory Effect Model" provides up-to-date information on store expansions, closings, and relocations to facilitate altering of the distribution system.

Small and large shippers can often take advantage of the logistics expertise offered by many progressive carriers. The President of a major motor carrier has stated:

> We've had many encouraging and enlightening sessions with customers of all sizes and

> types, not just the big companies....They open their books to us. We share our plans for the next year or two and they share the same type of information.
>
> ....They lay out their lanes and traffic, their new locations, and so on. Then we start overlaying their operation on top of ours to see how well we fit....This sharing of information was unheard of in our industry just a short while ago.

The Logistics or Traffic Manager's job has often mushroomed as a result of increasing carrier competition, changing carrier networks, and the proliferation of new and changing rates and services. One company that has successfully adapted the use of computers to the problem is CPC International. CPC manufactures and distributes a wide range of products, mostly in the areas of brand name grocery products and corn milling products. The company has computerized more than 1500 tariffs. An average of only five percent of the material in any tariff is pertinent to CPC. The computer program greatly reduces search time. Other improvements are being developed to assist in negotiating for least-cost rates, modes, and shipment combinations.

The proliferation of discount rates and the possibility that large numbers of carriers may each devise its own unique, simplified rate system have given rise to on-line computer systems and companies that keep track of all discounts by major motor carriers.

One of the firms that computerizes and maintains current rates and sells its service to shippers provides access to about

25 million class and commodity rates for approximately 17 thousand carriers. An executive of the firm has stated, "Our system turns the traffic manager into a negotiator and an analyst. With it he's not just a paper-shuffler anymore....The jury is still out on the on-line system though, because of the suspicion of traffic managers to embrace such a thing".

Shippers with private carrier operations may utilize software programs such as one developed by the American Trucking Associations. ATA states, "With a micro-computer, inexpensive software, and basic financial and operating data....any carrier is able to cost LTL shipments in less than a minute each."

Modal Choice and Carrier Selection

The systems already discussed above are used to help optimize modal choice and carrier selection. Sears, in addition to using computer-generated comparison of rates and modes, reportedly plans to implement electronic decision-making for routing choices. The flexibilities made possible by the MCA have reportedly facilitated a significant reduction by Sears in the number of common and contract carriers used. A Sears executive has advised that the number of carriers used decreased from 4228 in 1980 to 210 by mid-1983.

The Director of Distribution for the J.C. Penny Company reportedly stated in January 1983 that the number of primary carriers used by Penny's has been cut from about 1,500 to nine, and that the number of intrastate and local carriers used has been reduced from several thousand to hundreds.

Many shippers express great concern for the continued financial viability of the carriers they chose to do business with. This is another factor, along with service and contract commitments and planning assistance, that has resulted in use by many shippers of a reduced number of carriers.

According to the President of the Transportation Brokers' Conference of America, shippers are making increasing use of brokers to arrange routings of their shipments. He said that prior to 1978 there were less than 50 licensed property brokers in the U.S. He anticipated that there will be at least 12,000 brokers by 1987.

He believes that a majority of all freight traffic will eventually be controlled by fast-growing brokerage firms because of the expanded broker authority and what he calls "the incredible state of disorganization in the transportation industry". He entered the field because he realized that small shipments couldn't get decent rates without the volume discounts reserved for large shippers. Smaller shippers do not have facilities to keep up with constantly changing service and price options. Brokers fill the need.

Distribution Performance

A mid-1982 report by a well-known consulting organization concluded that only 22 percent of the 500 shippers interviewed have actually started to deal with some of the future deregulation possibilities. Those that have tend to be high-volume shippers. Seventy-one percent had not changed their methods of seeking rate information. Those who had changed seemed to be shifting more to carriers as information sources and to computerized data bases as an operational tool for rate information.

The survey included large and small shippers of high value goods, and large and small shippers of low value goods. The report said that inverviews revealed the picture of a shipper's job "as one of a manager under pressure, and poorly-prepared to deal with proposed changes in the motor freight environment" (with specific reference to individual rate setting).

At the annual meeting of the National Council of Physical Distribution Management (NCPDM) in late 1982, it reportedly became apparent from presentations and communications among 2,200 attendees that dozens of top distribution and traffic executives had been reassigned, demoted, fired, or retired, and that simultaneously, individuals are being sought to deal effectively with the challenges industry faces. NCPDM's Director of its Employment Clearing House stated:

> We are getting more inquiries from recruiters for distribution positions paying in six figures than we have resumes on file.

Sears reflected the type of statements made by a large number of shippers that emphasize improvements achieved under the MCA, when its Vice President of Physical Distribution and

Transportation reportedly said that transport costs had declined as a percentage of receipts, without stating a specific amount. He stated that it is nearly impossible for Sears to measure savings in the distribution function because base rates, routes, and service requirements change.

A very large number of shippers, even if less than a majority, are progressing and pioneering in the logistics area. Most shippers enthusiastically state that the changes brought by the MCA have reduced rates and improved service.

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CUSTOMER PICKUP OF FOOD AND GROCERY PRODUCTS UNDER SECTION 8 OF THE MOTOR CARRIER ACT OF 1980

Interstate Commerce Commission

Office of Transportation Analysis

July 1, 1983

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Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

July 1, 1983

Honorable George Bush
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

I am pleased to submit our yearly report on Customer Pickup of Food and Grocery Products under Section 8 of the Motor Carrier Act of 1980.

Section 8(a) of the Motor Carrier Act of 1980 permits sellers of food and grocery products who sell under a uniform zone delivered price system to reduce the price of their products by an amount that does not exceed the actual transportation cost savings to the seller if the purchaser picks up the product himself. The Interstate Commerce Commission is required by Section 8(b) of the Act to monitor the extent to which any savings that result from such customer pickups are passed on to the ultimate consumer and to report our findings annually to the Congress. This is our third report.

Based on the data received we are able to report the following.

- The passage of Section 8 and other related sections of the Motor Carrier Act of 1980 have resulted in a small but significant increase in customer pickup in 1981 as compared with 1980, and a rather substantial increase in 1982.
- There is no indication of any measurable failure to pass Section 8 savings through to the customers as required by the Act.
- No evidence of significant difficulties, abuses, or patterns of discrimination against small wholesalers or retailers as a result of Section 8 were uncovered.
- While the net cost savings from Section 8 are difficult to quantify, it appears that such savings are increasing.

Our analysis of this issue since passage of the Act has led us to conclude that as greater numbers of firms take advantage of the opportunities now available to them, Section 8 savings should continue to increase.

We note that the level of discussion of the backhaul issue in trade journals decreased this year compared to last. This reflects the fact that Section 8 discounts have become an accepted business practice that is no longer unusual or controversial.

Sincerely yours,

Reese H. Taylor, Jr.
Chairman

CUSTOMER PICKUP OF FOOD AND GROCERY PRODUCTS UNDER SECTION 8 OF THE MOTOR CARRIER ACT: 1983 REPORT TO THE CONGRESS

Section 8(a) of the Motor Carrier Act of 1980 permits sellers of food and grocery products who sell under a uniform zone delivered price system to reduce the price of their products by an amount that does not exceed the actual transportation cost savings to the seller if the purchaser picks up the product himself. The Interstate Commerce Commission is required by Section 8(b) of the Act to monitor the extent to which any savings that result from such customer pickups are passed on to the ultimate consumer and to report our findings annually to the Congress. This is our third report.

Our first report noted that very little Section 8 related customer pickup activity had taken place during the first year. We also discussed institutional arrangements and problems related to establishing and utilizing customer pickup plans as they were described to us in interviews with knowledgeable industry sources. While we were unable, as a result of this lack of activity and thus of any reliable data, either to quantify the magnitude of savings from customer pickup activity or to assess the degree to which such savings might be passed on, we suggested a methodology to employ when such information became available. For the past two years we have utilized our grocery industry contracts and consultants familiar with the wholesale and retail grocery industries to provide data for this report. Although these industries do not have final yearly financial reports completed at this point, we were able to obtain limited but sufficient data to permit us to report the following.

(1) The passage of Section 8 and other related sections of the Motor Carrier Act of 1980 resulted in small but significant increase in customer pickup during 1981 as compared with 1980, and a rather substantial increase during 1982.

(2) There is no indication of any measurable failure to pass Section 8 savings through to the customers as required by the Act.

(3) No evidence of significant difficulties, abuses, or patterns of discrimination against small wholesalers or retailers as a result of Section 8 were uncovered.

(4) While the net cost savings from Section 8 are difficult to measure, it seems that such savings are increasing.

1. Extent of Customer Pickup Activity

As noted in our first report, only a slight increase in customer pickup activity was observed during the first year Section 8 was in effect. Customer pickup was permitted prior to passage of the Act, and was available from approximately 160 sellers at over 3,000 locations under a variety of conditions and compensation plans. Such plans involved a small uniform allowance generally not exceeding the cost of delivery from the seller's facility to the nearest delivery point in the zone via the lowest cost mode.

Utilization of such pre-Act plans was low, as wholesalers and retailers generally found the level of allowances insufficient to cover the added costs of fuel, driver time, liability, loading and unloading, and equipment utilization associated with "backhaul," except from the most convenient locations. Some manufacturers, however, were reported to have cost-based plans which enjoyed significantly greater utilization.

During 1980 and early 1981, manufacturers appeared reluctant to initiate new plans for several reasons. First, food and grocery product manufacturers seemed to have believed that cost-related pickup allowances would lead to deterioration of the zone delivered price system, traditionally the dominant form of pricing in the grocery industry. Second, many manufacturers were unclear as to the exact meaning of some of the terms used in Section 8, and were, therefore, wary of inadvertently violating the Robinson-Patman Act. The Grocery Manufacturers of America formally requested an advisory opinion concerning the definitions of "grocery products" and "actual cost to the seller," and one large manufacturer requested an advisory opinion on the legality of a particular plan. Other contributing factors included the fear that permitting customer pickup would disrupt shipping operations, add to handling costs, and cause loss of control of the loading dock. Further, there was a fear of disruption of common carrier availability, service, and rates for the remaining traffic should substantial amounts of traffic be diverted to private carriage.

The Federal Trade Commission issued its advisory opinions in July 1981, defining grocery products as products primarily sold in grocery stores regardless of the nature of the purchaser, defining the limit on allowances as the cost which actually would have been borne by the seller had it delivered the product (but requiring nondiscrimination among customers at similar distances), and permitting a major manufactuer to limit its allowances to truckload quantities. While "actual cost" creates some uncertainty in a time of diverse and fluctuating common carrier rates, many firms contacted have accommodated this problem by offering allowances at some percentage (for example, 90%) of the relevant rail or truckload rate, and periodically reassessing these levels. While there remain some instances of scheduling problems, manufacturers generally now seem to view them as relatively minor, and many firms have instituted advance scheduling requirements for customer pickup. Some manufacturers have reported substantially increased productivity, reduced costs, and improved customer relations through their new pickup programs. Also, while some common carriers have left the market, most firms have reported adequate availability of irregular route (utilizing owner-operators) service at reduced rates.

A significant number of larger retailers and wholesalers appear to be examining (or are already implementing) the formation of a for-hire trucking subsidiary. Their objective is not only to achieve Section 8 savings but, more importantly, to engage in intercorporate hauling, to backhaul non-grocery items, and/or to have the ability to lease equipment and drivers to for-hire carriers in order to reduce emply mileage. Indeed, it is difficult to determine how much of the reported increase in customer pickup activity is related directly to Section 8 and how much to these other activities. It is our tentative judgment that Section 8 has been the catalyst for much of the current increase, but that a significant share (and perhaps in the near future, the majority) of increased customer pickup is a result of a more aggressive approach by management facilitated by other provisions of the Act.

In 1982, manufacturers, wholesalers, distributors and retailers have begun to participate in customer pickup programs. In response to the increasingly competitive environment, firms are focusing on attractive customer pick-up programs. Customers anxious to realize the benefits from such programs are taking advantage of them.

It appears that small customers are able to take full advantage of these allowances also. Progressive Grocer Magazine (March 1983) reports that progressive manufacturers such as Pillsbury, Borden, and others have allowances based on low minimum weights, thus making it extremely attractive for smaller customers.

In other cases, small companies note that they backhaul even when the allowance is small just to eliminate empty miles.

Non-food retail chains have also joined in the ranks of customers wanting backhaul allowances for pickup of their food items. Food Merchandising Magazine (Mid-November 1982) notes the reasons for this as being: 1) they realize they can improve the productivity of their traffic department and lower operating costs by eliminating empty miles; and 2) they realize that there are profits as well as savings to be found in backhauling.

2. Savings Passthrough

The Act requires that the Commission monitor and report annually on the extent to which any savings achieved under Section 8 are passed on to customers. While it is difficult to determine the exact passthrough of savings to customers, due to differences in accounting methods between firms, it is agreed that the environment is too competitive to not pass these savings on to customers.

We were informed, for example, that a wholesaler or retailer might receive a pickup allowance simply in the form of a lower FOB plant price, a stated discount from the specific list price, a credit to transportation charges, a separate or general credit to the invoice, or perhaps some other way. As various wholesalers, or retailers accounting systems were described to us, the allowance might be credited directly to the transporation function and become recorded as part of general transportation expenses, or directly to a separate motor carrier subsidiary (if one exists) and be "lost" in its accounts. Or it could simply be reflected in the (reduced) purchase "cost of goods sold" or be "lumped" with other discounts in a general credit account. In some instances, a separate "transportation credit" account may be maintained, but that account may or may not include other credits to transportation charges. Rarely, is an attempt made to account separately for net "backhaul" savings. It is highly unlikely, therefore, that the pickup savings associated with a case of canned tomatoes or paper towels could be traced with any certainty through the accounting process of both wholesale and retail functions to the ultimate shelf price. Therefore, as explained in previous reports, we have rejected the traditional "accounting trail" approach. The approach we have chosen provides the best available indication of whether or not the customers, or the firms owners, are benefiting from Section 8.

Methodology

It is our view that the savings passthrough requirement does not require us to follow a specific dollar account to a point where it shows up in a specific shelf price, or to determine whether a retailer or wholesaler intends to directly pass on a specific allowance. In a profit motivated economy, any business would prefer--and indeed is expected--to retain as great a portion of the savings from cost reducing activities as it can in order to earn a competitive return. The question is whether the degree of competition is sufficient to require that such savings eventually be passed on in some form in order for the firm to remain competitive. That is, will wholesalers' and retailers profits increase as a result of Section 8 savings, or will the market force these firms to pass on such savings in some way, e.g., maintain price levels in the face of rising costs.

The methodology employed to determine the extent to which savings are being passed on is the one used in last year's report. Briefly, it involves statistical analyses of the relationships between measures of customer pickup activity of representative groups of wholesalers and retailers, and measures of these firms profit levels. Because profits represent only about one cent or less of each sales dollar, any significant Section 8 savings not passed on would increase profits in a measurable way. Thus, a significant positive relationship between customer pickup activity and profits would indicate the possibility that Section 8 savings were not being passed on, while the absence of any such relationship would be a strong indicator that savings from customer pickup were not being retained by the firm. The statistical results were interpreted with the assistance of persons familiar with prevailing industry practices.

Several difficulties and reservations have arisen regarding the availability, reliability, and practicability of obtaining customer pickup utilization, savings, and profit data. These include:

(1) the serious reluctance of firms to divulge "proprietary" information (despite our assurance of confidentiality),

(2) non-comparability of data due to the diverse accounting practices among firms in the food and grocery industries, and

(3) absence of reliable or consistent information on net "backhaul savings," particularly among smaller firms.

The suggestion was made by the trade associations, and subsequently supported in conversations with the U.S. Department of Agriculture and other industry sources, that we utilize consulting firms already familiar with, and "trusted by" the food and grocery industries which were already collecting much of the relevant data. It was believed that they would be perceived by the industry as better able to protect confidentiality, and be more likely (through their knowledge of industry accounting practices and working relationships with specific firms) to provide accurate and comparable data at a lower cost and in a shorter time. We agreed, and retained two such consultants--one for the wholesale and the other for the retail industries--who currently produce recognized annual reports on the operating results of their respective industries. While neither of these firms was able to obtain the necessary data from all of the firms participating in their respective annual surveys, both have assured us that the data from a sample of these firms are representative of the activity of their industries.

Retail Chains

On the basis of availability of data on customer pickup activity, a sample of 21 retail chain stores was selected from those included in the annual Cornell University publication Operating Results of Food Chains. These firms represent over 10 percent of the gross sales of all U.S. food chains for the past 4 years, and are representative of all size groupings, geographic regions, and levels of backhaul utilization. Table 1 compares the profile of the sample with the data for all food chains published in the Progressive Grocer annual report.

Linear regressions were performed using the ratio of operating profits to sales as the dependent variable, and the ratio of transportation credits (i.e., backhaul income) to sales as the principal independent variable. "Operating profits" was selected as the measure best representing profits without the influence of extraneous variables such as the sale or acquisition of property, taxes, etc., and the ratio with sales was chosen to eliminate undue influence of size and to protect the confidentiality of respondents data. "Transportation credits" was selected to represent customer pickup activity as it reflects the payments by suppliers to retailers for customer pickup income, from which savings would be derived. Other measures of physical "backhaul" operations or net savings were unavailable from a sufficient number of retail firms.

Table I

Comparison of Sample with National Data

Characteristic		Sample	P. G. Report
Participation		21 retail chains	all retail chains
Gross Sales ($ 000,000)	1979	10,496	93,320
	1980	11,462	103,114
	1981	12,679	119,245
	1982	13,045	124,382
Operating Profit as % of sales			
	1979	.34%	.32%
	1980	.80%	.73%
	1981	.75%	.62%
	1982	.89%	.53%

A cross section regression analysis was performed for all observations for 1982 (21 observations), and for years 1979, 1980, 1981 and 1982 pooled (84 observations). No significant positive relationship was found between "backhaul" and profits; indeed there appeared to be a negative relationship.[2] A group of small, relatively profitable retailers in the sample, who performed little or no customer pickup, apparently led to this result. Most likely, the unusual result is simply due to the small number of observations in one year. A negative relationship, even if it were meaningful, would not indicate that backhaul revenues were being retained.

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[2] For example, for the year 1982, using operating profit as the dependent variable and transportation (backhaul) credits as the independent variable, the t-statistic (a measure of the significance of the variable) was -2.69, and the adjusted r^2 (measure of explanatory power) was 0.24. For all 4 years pooled, the t-statistic was 0.60 and the adjusted r^2 was -0.01.

Regressions were then performed relating the percent changes in the ratio of transportation credits to sales (the independent variable) to the percent change in the ratio of profit to sales (the dependent variable), for the periods 82-81, 81-80 and 80-79 (63 observations). The result again failed to indicate any positive relationship.[3]

Regressions were also performed to compare the profitability between firms that backhaul and those that do not backhaul. The ratio of transportation credits to sales is the independent variable and the ratio of profit to sales is the dependent variable. For the time period 82-81, 81-80 and 80-79 our sample of 21 firms included 12 which backhaul and 9 which do not backhaul for a total of 84 observations. Again the results failed to show any significant relationship between backhaul revenue and profits.[4]

We, thus, conclude that retail chains are not retaining savings from customer pickup programs, which are but a fraction of "transportation credits." Whether such savings were passed on to consumers in the form of lower prices (or, more likely, lesser price increases than might otherwise have occurred), or whether they were absorbed by increases in other expenses, we are unable to determine.

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[3] A t-statistic of -0.17 and an adjusted r^2 of -0.02 was obtained. Eliminating "outliers" (variables with magnitudes substantially different from the others, which could skew the result) failed to yield any significant relationship.

[4] A t-statictic of -4.37 and an adjusted r^2 of 0.18 was obtained. Eliminating outliers also failed to yield any significant relationship.

Wholesalers

Grocery wholesaling is an extremely diverse and highly competitive industry, comprised predominantly of privately held companies. It is generally agreed that survival in this industry requires taking advantage of any available discounts, promotions, rebates, allowances (including pickup allowances), "deals," price changes, careful timing of purchases, and similar practices. Examples of the above used to obtain additional income include: cash discounts for early payment of invoices; use of "last in first out" pricing and accounting during times of inflation, purchasing extra inventory toward the end of a manufacturer's discount promotion and selling it at the regular price after the end of the promotion period, charging or passing on a "transportation fee" based on less-than-truckload rates (for the quantity of goods sold) while purchasing in truckload or rail carload quantities, taking advantage of "backhaul" opportunities, and similar practices.

These practices are a normal part of wholesale grocery operations, and the retention of some of the income from them -- including backhaul allowances -- appears to be necessary for the firm's continued operational survival. As noted above, the issue is whether the competitiveness of the marketplace forces the wholesaler to provide that mix of price and service which prohibits it from keeping an increase in customer pickup allowances permitted by Section 8 as profits.

It is difficult to obtain reliable, meaningful, and comparable data for Section 8 customer pickup activity related to profit levels. However, our consultant was able to get verifiable, comparable, relevant data on customer pickup and profits for 32 firms out of a representative sample of 50 wholesalers included in his Annual Financial Comparison report. In addition, he was able to acquire more specific data on backhaul programs from 28 additional firms for a total of 60 wholesalers. Each sample includes firms in each geographic region (east, south, midwest, and far west) and each size category up to $300 million in annual sales.

Linear regressions similar to the ones for retailers were performed on this sample of 32 wholesalers, for the years 1982, 1981, 1980, and 1979. The ratio of backhaul income to sales (similar to "transportation credits to sales" above was used as the independent variable, and the ratio of operating profit to sales was used as the dependent variable. Data were pooled for a total of 49 observations no significant relationship was found.[5]

To assess the impact on changes in customer pickup activity over time on changes in operating profits, a regression was performed using the percent change in backhaul income from 1979 to 1980, 1980 to 1981 and from 1981 to 1982 as the independent variable, and the percent change in operating profits for corresponding time periods as the dependent variable (38 observations). Again, no significant relationship was found.[6]

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[5] For $OP/S = f(BH/S + C)$, the t-statistic was only -0.92 and the r^2 was only -0.02.
All are too small to be significant.

In order to explore other available measures of wholesalers customer pickup activity, we analyzed relevant additional data from the 28 additional firms of a representative sample which participated in the "Backhaul Activity Survey" for 1982. At least one sample firm is located in each geographic region, and the sample includes firms in the size range from $50 million to $300 million in gross sales.

The majority of the numerical analyses conducted provided an extremely mixed package of income and expense changes. These mixed returns can be arranged more easily with the following trends and considerations noted in the survey:

1. Company size is closely related to interest and use of backhaul possibilities. Smaller companies with their low order sizes and generally more efficiently used truck fleets are less likely to be able to make cost effective use of backhaul possibilities.
2. The company's market area size has a significant impact on backhaul possibilities. Generally the larger the market area, the larger the number of possibilities for backhaul activity.

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[6] The t-statistic was -0.36, the adjusted r^2 only -0.02. Once again too small to be significant.

3. A company's accounting capabilities as to the determination of cost effective backhauls provide a limitation factor. Larger companies with more detailed information and available data processing and management time have an advantage over smaller operations amd are therefore, more likely to use backhaul.

4. The accounting methods currently in use to record backhaul activity are not standardized and can cause significant variations on a company by company analysis.

5. Company attitudes on retention of backhaul income or the passthrough of savings to the retail level are entirely dependent on management's view of corporate profitability.

6. The three major exceptions to the mixed results were:

   The number of vendors providing backhaul availability is increasing steadily with the largest jumps occurring in the last two years.

   The use of backhaul allowances is increasing steadily with the largest jumps occurring in the last two years.

   Management is interested in backhaul possibilities if it can be proven cost effective.

3. Problems, Abuses, and Discrimination

With few exceptions, manufacturers, retailers, wholesalers, and warehousers seem generally satisfied, if not enthusiastic, about Section 8 customer pickup. While initially, some wholesalers and retailers complained of the slowness or reluctance with which some manufacturers have instituted plans or increased allowances, it appears that most manufacturers now offer some type of allowance.

Manufacturers reply that Section 8 requires that allowances not exceed actual cost of the transportation if the shipment were not picked up. In order not to risk breaking the law, particularly in a period of declining motor carrier rates, allowances are generally set below the truckload or carload rates of the low cost mode usually used by the seller. Further, some manufacturers note that while Section 8 was supposedly enacted to reduce empty backhauls of customers trucks, some customers are receiving allowances and using independent for-hire carriers to make pickups. "If our allowances are supposedly so low, how can they afford to do this?" One explanation may be that the for-hire carrier may be quoting its own "backhaul rate" to improve its equipment utilization. Another may be that there are an increasing number of new irregular route and contract carriers utilizing owner operators, with costs and rates substantially below those of unionized carriers or private fleets. Our own industry contacts report an increased interest in contract carrier operating authority this year as a result of Section 8 allowances.

Potential scheduling and dock utilization problems cited in our previous report do not seem to be as severe as originally anticipated; probably, in part, because manufacturers did not initiate plans until such concerns were ameliorated. Now, because of greater management interest in firms that offer backhaul programs, such issues are worked out to the mutual convenience of customers and manufacturers.

Another fear expressed last year is that large geographically dispersed customers would request a pickup allowance based on a distant distribution center, then transport the product to a nearby location. No interviewee was aware of any instance of such an abuse, though some acknowlegded that it could happen. Most manufacturers interviewed indicated that either they monitored shipping records to catch any changes from a customer's normal shipping patterns, assigned each customer to the nearest distribution center, or instituted some other "passive" check in their own financial self-interest.

Another potentially serious issue surrounding the passage of Section 8 was the fear that it would give the large national or regional chains an advantage over smaller, local retailers. There are several reasons to believe that it may not be as serious as first presumed.

First, most (if not all) grocery stores not belonging to retail chains belong to a voluntary wholesale group or cooperative, or have access to a wholesaler who can take advantage of backhaul opportunities. While national statistics show the larger wholesalers "backhaul" substantially more (twice the percentage) than smaller wholesalers, our surveys indicate that even small wholesalers aggressively pursue and utilize backhaul opportunities in order to remain competitive. There are, however, several size related factors which influence the ability to use backhaul. They include size and location of marketing area, average size of customers stores, and the type of equipment owned. But some of these disadvantages may be overcome by cooperation among wholesalers.

There was some concern prior to the FTC opinion on the Proctor and Gamble request that Section 8 plans might be limited to truckload only, and, thus, foreclose use by smaller customers. In their request, however, P. & G. noted that less than 10% of its merchandise was shipped LTL, and the FTC did not consider a truckload restriction to be discriminatory. On the other hand, some manufacturers have improved the relative position of small customers by giving their best volume price to any customer who picks up the minimum size shipment (5,000 lbs.). While some manufacturers do not encourage backhauling for their smaller customers because it would not be cost efficient, backhaul allowances are generally available to these customers if they wish to utilize them.

4. Actual and Potential Section 8 Cost Savings

As noted above, it is not possible to make an accurate estimate of net Section 8 related savings. Nevertheless, by combining various pickup allowance estimates it is possible to obtain a rough estimate of the limits within which maximum actual and potential savings might fall.

The analysis thus far has been based on variables representing customer pickup activity and changes in customer pickup activity. Table II summarizes the derivation of estimates of increases in customer pickup allowances since 1979, the year prior to the passage of Section 8. The 1979 figure was chosen as a base rather than 1980 to avoid understatement of potential savings.

Not included in the table are estimates of gross revenue and backhaul activity for independent grocery stores and convenience stores. Most of the independents and convenience stores are served by wholesalers whose pickup activity is recorded, and by store door delivery by manufacturers. With the exception of a few convenience store chains, it is unlikely that they themselves engage in any significant Section 8 activity. Many convenience stores are also supplied by wholesalers.

According to the estimates in Table II, approximately $165 million more was paid in customer pickup allowances in 1982 than 1979. This represents and increase of $55 million from our estimate of $109 million in 1981.

Some of this increase was undoubtedly due to inflation and some to increased purchases under pre-Section 8 plans. An even larger share of the increase was probably due to increases in customer pickup activities resulting from expansion of in-house motor carrier operations not related to Section 8 (intercorporate hauling or establishment of a for-hire motor carrier subsidiary). All of these factors further reduce the estimated level of customer pickup allowances resulting from Section 8. In addition, from this level must be subtracted the cost associated with customer pickup, the estimates which, according to interviewees willing to "venture a guess," ranged from 10 to 80 percent of allowances. Thus, a reasonable estimate of total net annual Section 8 related savings would be less than the $165 million estimated increase in pickup allowances since 1979.

These actual and potential savings, while falling short of the $300 million in 1975 dollars originally estimated by proponents of the provision, are indeed significant to many of the individual firms taking advantage of the opportunities created by Section 8 to remain competitive in this low margin industry.

For example, Progressive Grocer reported that during the nine months Borden was testing its backhaul program in 1982, almost one-quarter of a million dollars in backhaul revenue was passed on to Borden customers, with one west state retailer receiving in excess of $24,000 in backhaul allowances during that time. The Associated Wholesale Grocers, Inc. reports a backhaul income of $6 million annually since passage of the Motor Carrier Act of 1980, which is used to reduce costs to stores (Warehousing and Transportation, April 1983). Also noted in the same article was an increase in backhaul activity by the Certified Grocers of California, a wholesaler, whose backhaul/pickup of inbound dry grocery products increased from 13 percent in 1965 to 51 percent in 1982.

As greater numbers of firms take advantage of the opportunities now available to them, Section 8 savings should continue to increase. In, addition, we note that the level of discussion of the backhaul issue in trade journals decreased this year compared to last. This reflects the fact that Section 8 discounts have become an accepted business practice that is no longer unusual or controversial.

Table II

Increase in Customer Pickup Allowance Levels

From 1979 to 1982

Savings Source		Gross Pickup Allowance ($000,000)	Increase in Pickup Allowance '82-79' ($000,000)
Retail chains	1982	$200[2]	
	1979	102[1]	98
Wholesalers	1982	134	
	1979	67[1]	67
Total Wholesalers & Retail Chains	1982	334[2]	
	1979	169[1]	$165

[1] Industry figures from 1982 report.

[2] Estimated from percentage increase of cross pickup allowance in study sample

EXECUTIVE SUMMARY

This report was prepared in response to Section 19 of the Motor Carrier Act of 1980. The Secretary of Transportation and the Interstate Commerce Commission were directed by this Act to ". . . develop legislative or other recommendations to provide a more efficient and equitable system of state regulations for interstate motor carriers." In doing so, it was necessary to examine the development of and the differences in state regulations, as well as the problems afflicting interstate carriers and states.

Current requirements imposed on interstate motor carriers have evolved over the past 60 years from simple registration of vehicles to a complex structure involving registration, fuel taxes, privilege and use taxes, property taxes, third structure taxes (e.g., ton-mile, weight-distance and gross receipts taxes), ad valorem and sales taxes and fees for initiating tax accounts, purchasing decals and implementing safety programs. Along with these multiple fees have come a myriad of administrative requirements. As these fees and requirements have multiplied, their impact on interstate carriers has become increasingly burdensome.

The purposes of this report are to (1) describe the differences in state requirements that contribute to the burden, (2) discuss and evaluate a range of alternatives to the present plethora of requirements and (3) provide recommendations that will reduce the burden imposed on interstate carriers.

CONTENT

The report covers two types of requirements, regulatory and revenue producing. Regulatory requirements encompass operating authority certification under Public Law 89-170, safety, hazardous materials movement, oversize and overweight permitting and economic regulation of intrastate commerce. Revenue producing requirements include vehicle registration, fuel taxes and third structure taxes. The discussion of these topics is supplemented by a presentation of state administrative issues.

The report views the two types of requirements differently. Because of Federal efforts to eliminate inconsistent requirements in many of the regulatory areas, alternative approaches are not evaluated. Instead, recommendations that reconfirm and improve present Federal efforts are made. However, the preponderance of problems identified during the study dealt with state revenue producing systems. For this reason, the report concentrates on the compliance requirements of these systems and specifically the procedural changes that could be made to reduce the burden on carriers. State revenue producing regulations and procedures are described, and alternatives to the present methods are evaluated, using a number of criteria.

STATE REQUIREMENTS OVERVIEW

Generally, each state imposes at least three requirements: (1) registration of vehicles, (2) payment of fuel taxes and (3) registration of interstate operating authority. In addition, certain states impose a fourth requirement, commonly referred to as the third structure tax. With the exception of operating authority registration, all of these requirements are revenue producing and each varies from state to state in terms of procedures and payments. The administration of the requirements is not normally done by a single department within a state but by separate departments, each operating independently. This fragmentation results in multiple transactions within a state. This situation is compounded because the interstate carrier must deal with a variety of agencies and different procedures in virtually every state traversed. The cumulative effect of this variation in procedures plus multiple filings creates an administrative and economic burden.

Each area of requirements involves a unique set of procedural differences. Four major areas are discussed: vehicle registration, fuel taxes, third structure taxes and registration of interstate operating authority.

Vehicle registration is conducted by the state motor vehicle departments. For the interstate operator, registration is required in each state unless the states have established agreements. These include bilateral agreements between two states where reciprocal privileges are extended to the carrier, once the vehicle is properly registered in one of the states, and multilateral compacts between a number of states providing for either reciprocity or proration of fees among the member jurisdictions. It is also possible for interstate carriers to obtain trip permits in lieu of full registration if travel into a state is infrequent. These methods, whether instigated by state or individual initiative, provide a measure of relief from payment of full registration fees in each state, where travel is expected. This relief follows a poorly defined pattern in that no one method is universally available or uniformly available to the carrier. Both procedures and fees vary from state to state. The International Registration Plan (IRP) has had the most success in achieving uniform administration and in attracting member states. Under the IRP a fleet of vehicles is registered in the base state and the fees are distributed to other member jurisdictions, based on the percentage of a carrier's total mileage to be traveled in each of the states. However, one-half of the states are not members, and those that are often administer the IRP differently. These differences have imposed barriers to increasing membership and threaten the continuing existence of the IRP.

Fuel taxes are collected from fuel users by the state revenue departments through a variety of methods. Generally, they are collected when fuel is purchased, but most states also require that taxes paid by commercial vehicles be reconciled with mileage traveled within the state. This is done through monthly or quarterly carrier reporting of fuel use and mileage. Few states agree on frequency of reporting, credit and refund policies, administrative procedures, which vehicles, fuels and operations are to be taxed and how the mileage and fuel use figures are to be reconciled. Model fuel tax laws have been proposed but have not been universally adopted. The North American Gasoline Tax Conference (NAGTC) has sponsored a voluntary plan (Five Point Plan) to guide states toward uniformity. While many states have accepted some features of the plan, few have adopted all the recommendations. Recently, several states have discussed a fuel tax agreement similar in intent to the IRP. Although this is an encouraging step toward greater uniformity, the nationwide feasibility of such an effort cannot be estimated at this time.

Third structure taxes (vehicle registration fees and fuel taxes are considered the first two tax structures) are not universally administered by the same unit of state government. Largely this is due to differing bases of taxation being used. Among the third structure taxes imposed are gross receipts taxes, mileage taxes (such as ton-mile, weight-mile, axle-mile and vehicle-mile taxes) and motor fuel surtaxes. These have been used not only to obtain additional revenue but also, as some proponents argue, to develop greater overall equity in the highway user tax structure. Some of these taxes do pose problems in the areas of administration, compliance and enforcement and, as a result, in the overall tax equity. Little effort has been made to achieve uniformity in these taxes.

The registration of interstate operating authority is handled in most sates by public utility (or service) commissions. The authority to operate as an interstate motor carrier (obtained from the ICC) must be filed with most states where operations are to be conducted. Vehicles operating under such authority usually must be identified, a statement of insurance coverage filed and a resident process agent designated in each state of operations. Uniform standards for these activities are set out in Public Law 89-170, enacted in 1965. This law encourages uniformity in fees, forms and identifiers required for the registration of operating authority. It also places limits on fees that may be charged to interstate carriers for these activities. It is not, however, oriented toward permitting one filing to serve multi-state needs, and thus requires motor carriers to certify separately with each state.

While these four areas do not represent all the state requirements, they are universally problematic for the greatest number of interstate carriers. Some states acting on their own initiative have attempted to ease the administrative burden on carriers through collective action with other states and within their individual administrative frameworks. Unfortunately, these individual efforts have not led to widely accepted uniform procedures.

Safety issues long have received considerable Federal attention which has resulted in mechanisms to facilitate uniformity. Oversize and overweight permitting requirements, intrastate economic regulations and hazardous materials movement regulations pose problems only for certain groups of carriers. For this reason, these problems are discussed separately in the report.

OPTIONS AND RECOMMENDATIONS

While the states have made progress toward more uniform requirements, movement has been slow. Programs proposed by groups of state administrators have been accepted by some jurisdictions, but rejections or modifications by others have stymied the progress of nationwide uniformity. In light of these efforts by the states and the problems that still exist, options for improvement are proposed and evaluated in this report. The options are examined to determine if they:

1. simplify and provide for nationwide uniform state requirements,
2. provide for an equitable tax basis, so carriers are taxed on the same basis with privileges extended equally,
3. cause only a minimum level of interference with state powers,
4. enhance interstate commerce,

5. cause minimum disruption to the existing system and
6. provide benefits that outweigh costs for the greatest number.

The options considered range from full Federal pre-emption to no action. Both of these extremes are evaluated and found to have disadvantages. Specific options, not mutually exclusive, that address each administrative area include the following:

Options - Vehicle Registration, Fuel Tax, Third Structure Taxes, and Combined

Vehicle Registration

1. Restrict states to nominal charges for vehicle registration, transferring the bulk of state revenue collection to another form of user charge.
2. Establish nationwide reciprocity.
3. Establish Federal standards and guidelines for interstate vehicle registration.
4. Establish a nationwide proration system, either as a compact between the states or under a Federal revenue collection and distribution process.

Fuel Tax

1. Require universal compliance with the Five-Point Plan, which encompasses a standard form and reporting period.
2. Establish a nationwide fuel tax agreement under which the carrier's base state acts as administrator of the program.
3. Require each state to establish a system under which the user pays a fuel tax at the pump with no fuel use reporting. (Large carriers could be permitted to purchase fuel under existing state retail-sale-purchase laws).
4. Institute direct payment of all fuel tax to the Federal Government, with funds collected and redistributed to states.

Third Structure Taxes

1. Elimination of all existing third structure taxes.
2. Development of uniform standards for third structure taxes and reporting procedures.

Combined

In addition to those options aimed at solving problems associated with the individual major areas of state requirements, solutions combining these areas also are evaluated. They are included to demonstrate how major similar areas of state regulation could be combined to simplify motor carrier vehicle certification. Possible combined solutions include the following:

1. Fulfill base state requirements and provide free reciprocity.
2. Replace fuel tax and vehicle registration requirements with a simple, uniform weight-distance tax.
3. Mandate that each state participate in a compact for vehicle registration and fuel taxes, structured in a manner similar to Public Law 89-170, but limiting carrier filings and registration to the base state.
4. Adoption of a process similar to that of New Mexico, whereby the applications for registration, fuel tax, economic authority and third structure taxes are reported on a single combined form.
5. Combination of third structure taxes with an existing vehicle certification mechanism.

Federal Involvement

Although the options discussed appear simple and straightforward, the mechanisms of implementation are not. There should be no expectation that any option will be universally adopted by the states, voluntarily. It is clear from the history of state requirements that the impediments to voluntary action are too great. The states have faced the problems of nonuniformity throughout the past five decades, and while some states have initiated steps to attain uniform procedures, a significant number have not.

There is a constitutionally mandated Federal interest in interstate commerce and in the removal of impediments to its efficiency. However, in the absence of congressional direction the courts have been responsible for ruling on the merits of state requirements. Clearly, where problems have arisen, there is Federal responsibility to clarify what is or is not permissible regarding state impositions.

What remains is to define the Federal role. This should include providing a mechanism for development and adoption of standards. This can be accomplished without singling out an individual state for reform. States are best suited to define their own revenue needs and, consequently, their own tax rates. While they should continue to do so, it should be done within the confines of an efficient and equitable system. This system should be developed with Federal oversight, through a cooperative effort by the states and industry. Once developed, it could be implemented at the national level. Maintenance of the system should be left to the states and industry. A long-term Federal role is not necessary. To achieve this end, within a reasonable time frame, the following recommendation is made.

Recommendation - Vehicle Registration, Fuel Taxes, and Third Structure Taxes

Using a Federal law similar to Public Law 89-170, state representatives should be required to establish standards for vehicle registration, fuel taxes and third structure taxes, using legislatively defined criteria. This should be accomplished in consultation with industry representatives over a 2-year period under Federal sponsorship. Once developed and approved, the standards could be adopted as Federal law. The Federal criteria used to guide the task force should require certain uniformity objectives to be met, including base-state certification; payment to the base state of fees and taxes due other states, an equitable distribution of revenue among states; the standardization and consolidation of forms; a single contact point within each state for application and filings; and a limit on fees paid for identification stickers, plates or other indicia.

Options - Interstate Operating Authority (PL 89-170)

Federally adopted standards for operating authority requirements are already established under Public Law 89-170. Instead of evaluating alternatives to Public Law 89-170, the following options were considered that would enhance the existing laws:

1. Encourage voluntary action by states through the National Association of Regulatory and Utility Commissioners (NARUC) to attain greater uniformity.
2. Increase monitoring by ICC of state variations from Public Law 89-170, with legal action taken where deemed necessary to compel compliance.
3. Retain the current Public Law 89-170 mechanism, but modify it to require registration only through the base state.

Recommendation - Operating Authority (Public Law 89-170)

Recently, NARUC adopted amendments to 49 C.F.R. 1023 that will resolve many of the problems with Public Law 89-170. These amendments have been submitted to the Interstate Commerce Commission for certification. The Commission affirms its role in enforcement of Public Law 89-170. The Commission and NARUC will continue to explore means to reduce duplicative insurance filings and examine disparities in re-issuing cab cards for single trip leases of 29 days or less. In addition, the Commission and the states should consider base-state filings an important area of inquiry. The ICC and NARUC periodically should review the current rules and regulations to determine their effectiveness.

Other Recommendations

The following recommendations relate to intrastate economic regulations and other state regulatory requirements, which generally did not require an evaluation of several different options. Some involve solutions recently established through other Federal actions or relate to ongoing Federal activities.

Intrastate Economic Regulation

The present jurisdictional division between the states and ICC should be maintained. However, the states should be encouraged (through a congressional policy statement) to seek uniformity between the ICC and state regulations. Motor carriers of passengers should be excluded from the policy statement since the recent enactment of the Bus Regulatory Reform Act of 1982 (P.L. 97-261) acknowledges the differences between freight and inter-city bus operations and proposes specific regulatory reforms for buses.

Safety

To reduce the problems of regulatory inconsistency, the Department of Transportation (DOT) should continue to encourage each state to adopt the Federal Motor Carrier Safety Regulations (FMCSR) and apply them to all motor carriers. For those states that have adopted the FMCSR, periodic Federal reviews will be made of how closely the states adhere to the FMCSR. This could include a review of the safety requirements imposed by other government agencies within the state (i.e., city, county, etc.) to resolve conflicts.

To facilitate nationwide uniformity, the DOT could provide funds under current programs for demonstrating the effectiveness of the FMCSR to those states which have not adopted the standards.

Hazardous Materials Movements

The Environmental Protection Agency (EPA) is proposing to amend existing regulations (40 C.F.R., Parts 262 and 123) to introduce a uniform hazardous waste manifest form. In concert, the DOT is proposing to amend the Hazardous Materials Regulations. This change would require compliance with EPA's amendment and stipulate that a different or additional manifest imposed by state or local governments is inconsistent with Federal regulations.

Currently, under Federal transportation safety requirements issued pursuant to the Hazardous Materials Transportation Act, the Bureau of Motor Carrier Safety can preempt state routing requirements. Since this mechanism was only recently promulgated, it should be continued until its effectiveness can be determined.

Oversize and Overweight Permitting

The Federal Government should continue to examine the feasibility of expanding a regional truck permit center concept for the interstate carrier, including permits involved in nondivisible load hauling. The existing center operated by the state of Iowa facilities permitting by issuing permits for several states at one location on a 24-hour, 7-days-a-week basis. Further, the Federal Government should continue to encourage organizations such as the American Association of State Highway and Transportation Officials (AASHTO), the American Association of Motor Vehicle Administrators (AAMVA) and others to eliminate vehicle signing and flagging inconsistencies and conflicting permit rules and regulations.

interstate commerce commission
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OCTOBER 3, 1983

(202) 275-7252
BROWN

NATION'S LARGEST TRUCKING COMPANIES REPORT LARGE GAINS IN REVENUES AND EARNINGS FOR THE SECOND QUARTER OF 1983

Revenues, net carrier operating income and net income of the Nation's largest trucking companies increased substantially in the second quarter of 1983, compared to the same period of 1982, according to a report released today by the Interstate Commerce Commission's Bureau of Accounts.

The report compares the earnings of 100 of the largest common carrier trucking companies for the quarter and twelve months ending June 30, 1983, with the corresponding periods in 1982. This report excludes the two United Parcel Service (UPS) carriers, whose operations are dissimilar and highly specialized, i.e., pickup and delivery of small packages. The 100 carriers in this report account for about 44 percent of the total revenues generated by approximately 3,000 Class I and II regulated trucking companies.

A comparison of the second quarter operations reveals that:

... Operating revenues increased 3.7 percent to about $4 billion.

... Net carrier operating income rose substantially, by 80.6 percent to $219.6 million.

... Net income also improved significantly, by 78.2 percent to $121.5 million.

... Revenue tons hauled declined 3.4 percent.

... Of these 100 carriers, 62 reported increases in operating revenues, 71 reported improved net carrier operating income, 65 reported improved net income, and 52 reported increases in tonnage hauled.

... This increase in revenues and earnings, reflecting the pick-up in the Nation's economy, represents a continuation of the improvement shown in the first quarter of 1983 compared to the first quarter of 1982.

(MORE)

... These improvements in earnings in the first and second quarters of 1983 are the first year to year quarterly increases in earnings for the 100 largest trucking companies since the second quarter of 1981.

A comparison of the results for the 12-month periods shows that:

... Operating revenues remained about the same, approximately $15.6 billion, as revenue tons hauled declined 5.8 percent.

... Net carrier operating income increased 33.7 percent to $430.8 million.

... Net income increased 20.3 percent to $220.5 million.

... The operating ratio (ratio of operating expenses to operating revenues) decreased (improved) to 97.2 percent from 97.9 percent.

... Rate of return on shareholders' equity increased to 7.57 percent from 6.17 percent.

The net income discussed above and used in the computation of return on shareholders' equity represents net income before any net extraordinary charges for the write-down of operating rights.

This report is based primarily upon quarterly reports submitted to the Commission. The figures have not been verified by the ICC.

Copies of this report can be obtained from the Office of the Secretary, Publications Room B-229, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 275-7833.

ICC

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS
WASHINGTON, D.C. 20423

SHEET 1 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Eastern District Total (33)......	1983	$1,639,293	$ 99,971	$ 59,064	15,814	$6,330,294	$225,078	$136,984	62,139	96.4	9.93
	1982	1,558,454	58,420	40,822	17,079	6,227,494	149,206	113,393	65,410	97.6	8.21
Southern District Total (22).....	1983	896,390	57,240	35,196	10,286	3,379,799	105,550	48,939	39,119	96.9	8.52
	1982	819,854	35,035	15,358	9,853	3,299,886	87,033	30,606	39,238	97.4	5.54
Western District Total (45)......	1983	1,492,989	62,430	27,236	14,930	5,857,966	100,195	34,538	58,553	98.3	3.61
	1982	1,506,424	28,176	11,988	15,525	6,085,469	86,082	39,225	65,039	98.6	3.79
Total All Carriers 6/..........	1983	4,028,672	219,641	121,496	41,030	15,568,059	430,823	220,461	159,811	97.2	7.57
	1982	3,884,732	121,631	68,168	42,457	15,612,849	322,321	183,224	169,687	97.9	6.17
INDIVIDUAL CARRIERS DATA EASTERN DISTRICT											
A-P-A Transport Corp..............	1983	21,688	4,778	2,358	108	83,184	15,262	7,311	424	81.7	28.00
	1982	20,397	3,876	1,795	105	78,727	12,880	6,102	422	83.6	29.18
Aero Mayflower Transit Co.........	1983	53,977	2,138	1,276	97	204,208	6,083	3,834	377	97.0	17.63
	1982	52,257	1,886	1,327	97	203,375	4,136	3,373	394	98.0	18.59
Allied Van Lines, Inc.............	1983	78,008	1,137	1,096	126	281,007	823	2,701	516	99.7	16.29
	1982	73,010	199	561	116	287,729	(1,364)	1,676	557	100.5	9.21
Associated Truck Lines, Inc.......	1983	49,792	1,199	(1,614)	488	192,665	1,886	(1,416)	1,915	99.0	-0-
	1982	47,832	(281)	(159)	497	178,567	(4,658)	(1,301)	1,849	102.6	-0-
Atlas Van Lines, Inc..............	1983	33,654	1,334	824	61	126,032	4,473	4,590	229	96.5	16.15
	1982	34,289	1,367	1,010	63	128,844	3,583	5,783	251	97.2	24.32

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 2 OF 13

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Bekins Van Lines, Inc.	1983	$41,838	$ 710	$ 572	74	$165,320	$ 4,209	$ 3,652	301	97.5	15.37
	1982	47,690	565	665	88	170,461	3,506	2,942	325	97.9	14.80
F.J. Boutell Driveaway Co.	1983	3,612	405	240	24	29,034	627	455	245	97.8	3.11
	1982	15,062	1,100	(154)	133	52,722	1,672	489	451	96.8	3.38
Branch Motor Express Co.	1983	30,817	(954)	(1,324)	310	121,875	(6,945)	(6,593)	1,222	105.7	-0-
	1982	34,446	(234)	(1,091)	340	142,045	(7,803)	(7,793)	1,476	105.5	-0-
C&J Commercial Driveaway, Inc.	1983	16,132	1,698	859	155	54,116	3,076	1,371	539	94.3	17.42
	1982	10,797	703	569	120	41,731	95	(287)	439	99.8	-0-
Central Transport, Inc.	1983	52,387	5,258	4,373	1,173	165,372	6,717	5,612	3,928	95.9	59.13
	1982	36,303	2,490	2,808	880	128,700	(3,012)	(402)	3,111	102.3	-0-
Chemical Leaman Tank Lines	1983	37,034	(142)	(336)	1,467	143,303	(3,334)	(3,383)	5,386	102.3	-0-
	1982	38,777	511	(263)	(1,359)	158,981	1,764	(1,178)	5,458	98.9	-0-
Coastal Tank Lines	1983	14,738	(41)	(426)	565	60,356	(530)	(3,319)	3,250	100.9	-0-
	1982	16,886	350	(150)	782	72,040	1,968	(1,111)	3,700	97.3	-0-
Commercial Carriers, Inc.	1983	37,582	2,992	1,462	576	115,386	5,674	4,711	1,859	95.1	19.93
	1982	26,116	1,793	1,020	447	95,933	5,286	2,948	1,800	94.5	13.73
Duff Truck Line, Inc.	1983	13,516	343	233	185	51,834	(1,698)	(1,975)	684	103.3	-0-
	1982	14,382	180	(37)	189	56,427	(1,033)	(1,292)	757	101.8	-0-

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 3 OF 13

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenue	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Hall's Motor Transit Company......	1983	$45,070	$ (813)	$(1,024)	289	$210,007	$ (6,458)	$(8,647)	1,661	103.1	-0-
	1982	50,990	(1,761)	(1,625)	442	232,467	(12,160)	(9,677)	2,182	105.2	-0-
Holland Motor Express, Inc........	1983	17,952	2,227	1,257	152	62,530	5,147	3,107	545	91.8	18.19
	1982	15,200	1,414	835	144	57,826	2,710	2,649	613	95.3	13.15
Holmes Transportation, Inc........	1983	14,218	175	233	160	55,086	464	937	638	99.2	7.80
	1982	13,735	(249)	(245)	161	54,878	(722)	(501)	658	101.3	-0-
IMFS, Inc.........................	1983	45,503	(2,704)	(3,676)	278	201,836	(14,952)	(19,082)	1,644	107.4	-0-
	1982	58,342	(1,505)	(2,421)	608	244,699	(9,079)	(6,927)	2,613	103.7	-0-
Jones Transfer Company...........	1983	14,460	1,150	1,008	300	50,705	996	626	1,038	98.0	9.20
	1982	12,417	276	10	285	49,497	(1,895)	(2,012)	1,069	103.8	-0-
M&G Convoy, Inc...................	1983	19,266	574	376	229	63,335	(58)	91	716	100.1	0.93
	1982	17,361	926	548	186	61,333	3,273	1,579	653	94.7	16.27
Matlack, Inc......................	1983	39,766	1,260	296	1,723	150,538	1,482	(1,197)	6,743	99.0	-0-
	1982	39,259	1,009	(208)	1,748	175,540	9,879	3,235	8,041	94.4	7.67
National Freight, Inc.............	1983	19,804	237	672	334	81,008	1,058	2,319	1,264	98.7	38.90
	1982	17,869	(569)	(270)	271	76,086	(870)	(723)	1,519	101.1	-0-
No. American Van Lines, Inc.......	1983	115,931	3,369	3,008	551	499,849	14,883	15,709	2,249	97.0	11.99
	1982	108,592	6,271	6,847	459	489,387	23,226	26,994	1,966	95.3	18.06

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 4 OF 13

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)	QUARTER ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Nu-Car Carriers, Inc..............1983	$ 25,607	$ 1,908	$ 1,544	555	$ 83,877	$ 2,166	$ 821	1,656	97.4	22.40
1982	25,772	2,021	1,487	502	73,931	2,914	309	1,386	96.1	9.02
Oneida Motor Freight, Inc.........1983	13,842	412	342	101	51,345	178	284	415	99.7	4.76
1982	13,231	445	505	1,193	48,375	(1,425)	(620)	497	102.9	-0-
R-W Service System, Inc...........1983	8,742	571	359	347	36,712	305	(459)	1,385	99.2	-0-
1982	15,976	400	226	492	73,141	(553)	(1,888)	2,173	100.8	-0-
Preston Trucking Co., Inc.........1983	67,576	4,388	2,440	649	238,852	8,877	5,991	2,273	96.3	8.97
1982	55,437	2,987	1,964	518	205,898	7,487	5,585	2,085	96.4	8.01
Red Star Express Lines............1983	24,177	3,227	1,405	170	92,998	9,154	3,549	680	90.2	10.27
1982	22,241	1,862	1,053	174	84,245	4,352	3,099	694	94.8	8.54
Refiners Transport & Terminal.....1983	11,857	315	(8)	1,469	47,650	(168)	(2,693)	5,978	100.4	-0-
1982	13,250	215	162	1,641	52,420	1,870	964	5,889	96.4	6.18
Roadway Express, Inc..............1983	282,637	31,095	22,819	1,099	1,173,668	102,797	84,213	4.733	91.2	17.51
1982	273,461	22,671	19,033	1,173	1,117,718	80,821	69,237	4,804	92.8	16.59
St. Johnsbury Truck Co., Inc......1983	47,194	3,464	1,522	358	189,264	12,644	6,717	1,471	93.3	24.19
1982	36,475	2,154	873	301	145,299	5,092	4,566	1,224	96.5	18.08
Smiths Transfer Corporation.......1983	79,481	3,407	1,996	538	290,039	3,218	938	1,974	98.9	1.73
1982	68,733	(1,183)	(524)	477	277,131	972	(683)	1,962	99.6	-0-

SHEET 5 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
EASTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Yellow Freight System, Inc........	1983	$ 261,435	$24,854	$14,902	1,103	$ 957,303	$ 47,022	$ 26,209	4,201	95.1	12.13
	1982	231,869	6,531	4,671	1,088	911,341	16,295	8,258	4,392	98.2	3.79
Total Eastern Carriers (33).......	1983	1,639,293	99,971	59,064	15,814	6,330,294	225,078	136,984	62,139	96.4	9.93
	1982	1,558,454	58,420	40,822	17,079	6,227,494	149,207	113,393	65,410	97.6	8.21
SOUTHERN DISTRICT											
AAA Cooper Transportation........	1983	14,915	1,608	1,214	142	54,624	1,217	(194)	536	97.8	-0-
	1982	13,300	1,718	1,530	146	49,114	4,253	2,669	543	91.3	25.98
Alterman Transport Lines, Inc....	1983	10,852	103	31	109	44,340	1,022	187	473	97.7	1.29
	1982	11,052	169	109	118	45,275	1,367	876	488	97.0	6.15
Bowman Transportation, Inc.......	1983	38,371	1,162	1,366	455	135,986	(2,264)	106	1,583	101.7	0.20
	1982	32,407	172	421	361	140,328	(1,205)	(356)	1,595	100.9	-0-
Brown Transport Corporation......	1983	38,404	3,575	3,129	568	142,290	8,323	6,108	2,048	94.2	55.11
	1982	34,267	2,472	1,841	454	139,592	6,930	4,622	1,889	95.0	35.09
Carolina Freight Carriers Corp...	1983	74,715	6,187	3,024	447	293,569	18,023	8,958	1,838	93.9	23.37
	1982	61,770	3,279	1,770	416	258,475	10,453	5,057	1,820	96.0	15.08

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR SOUTHERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Mason & Dixon Lines, Inc..........	1983	$ 36,763	$ 806	$ 345	392	$149,324	$ (5,193)	$ (7,639)	1,510	103.5	-0-
	1982	35,166	(542)	(1,184)	334	163,997	(792)	(2,968)	1,570	100.5	-0-
McLean Trucking Company...........	1983	133,370	3,920	5,791	726	496,277	(12,244)	(2,241)	2,729	102.5	-0-
	1982	129,289	(33)	(1,925)	692	533,768	(17,275)	(13,863)	2,916	103.2	-0-
Melton Truck Lines, Inc...........	1983	11,177	236	108	318	45,834	305	521	1,340	99.3	5.45
	1982	12,948	10	35	348	49,219	(756)	(124)	1,253	101.5	-0-
Mercury Motor Express, Inc........	1983	12,447	(612)	(338)	140	46,968	(3,588)	(1,904)	526	107.6	-0-
	1982	12,682	(253)	(117)	157	47,858	(1,236)	(465)	614	102.6	-0-
Miller Transporters, Inc..........	1983	12,392	175	(92)	959	48,410	675	(457)	3,887	98.6	-0-
	1982	12,569	709	108	1,023	50,118	1,774	(941)	4,027	96.5	-0-
Old Dominion Freight Lines, Inc...	1983	33,644	2,137	1,288	508	120,211	5,905	2,699	1,872	95.1	21.16
	1982	26,284	1,672	942	440	97,826	1,869	251	1,695	98.1	2.01
Overnite Transportation Company...	1983	83,506	14,066	7,764	741	307,178	42,183	23,709	2,804	86.3	18.17
	1982	73,217	11,095	5,977	675	289,197	33,804	18,398	2,803	88.3	15.77
Pilot Freight Carriers, Inc.......	1983	48,999	(1,106)	(1,601)	405	169,851	(7,689)	(9,131)	1,365	104.5	-0-
	1982	39,530	(1,253)	(1,162)	295	151,637	(5,487)	(4,057)	1,125	103.6	-0-
Poole Truck Line, Inc.............	1983	16,938	2,477	1,875	639	60,615	6,517	3,926	2,325	89.2	30.32
	1982	14,815	1,815	1,126	625	52,396	3,638	554	2,277	93.1	4.27

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 7 OF 13

DISTRICT, CARRIER AND YEAR SOUTHERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
RTC Transportation, Inc.	1983	$ 38,424	$ 1,448	$ 501	704	$ 156,640	$ 6,393	$ 2,269	2,731	95.9	17.20
	1982	37,356	1,445	494	642	146,767	4,891	1,716	2,378	96.7	14.78
Ryder Truck Lines, Inc.	1983	170,653	9,982	5,056	1,291	641,577	19,024	8,329	5,286	97.0	12.77
	1982	160,486	6,234	2,878	1,403	630,351	20,927	9,513	5,652	96.7	14.19
Saia Motor Freight Line, Inc.	1983	11,613	1,663	949	130	46,310	5,354	3,207	487	88.4	18.20
	1982	12,928	1,954	1,179	158	50,004	6,007	2,921	591	88.0	20.22
Southeastern Freight Lines	1983	14,738	2,168	2,094	170	53,019	5,304	4,939	614	90.0	47.08
	1982	13,159	1,069	950	157	52,578	2,193	1,584	680	95.8	15.29
The Motor Convoy, Inc.	1983	17,170	189	(5)	756	58,977	82	910	2,198	99.9	39.32
	1982	15,369	119	(84)	675	58,371	1,552	835	2,276	97.3	35.91
Thurston Motor Lines, Inc.	1983	23,510	1,689	84	275	98,356	4,319	(648)	1,267	95.6	-0-
	1982	23,349	887	(620)	308	94,883	4,323	(1,098)	1,237	95.4	-0-
Transus, Inc. 7/	1983	24,161	2,221	1,321	227	90,723	4,439	2,357	943	95.1	10.55
	1982	22,213	1,230	638	255	89,657	5,064	2,542	1,078	94.4	19.41
Watkins Motor Lines	1983	29,628	3,146	1,292	184	118,720	7,446	2,928	757	93.7	24.71
	1982	25,698	1,067	452	171	108,475	4,739	2,940	731	95.6	26.79
Total Southern Carriers (22)	1983	896,390	57,240	35,196	10,286	3,379,799	105,550	48,939	39,119	96.9	8.52
	1982	819,854	35,035	15,358	9,853	3,299,886	87,033	30,606	39,238	97.4	5.54

SHEET 8 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT		QUARTER ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
ABF Freight System, Inc.	1983	$ 87,347	$ 1,839	$ 1,247	527	$ 339,551	$ (521)	$ (10,684)	2,049	100.2	-0-
	1982	69,640	663	(134)	451	282,103	(177)	(1,909)	1,868	100.1	-0-
East Texas Motor Frt.	1983	-0-	-0-	-0-	-0-	27,740	(6,163)	1,092	172	122.2	-0-
Lines, Inc. 8/	1982	47,641	(3,189)	(3,036)	292	194,241	(15,415)	(9,858)	1,298	107.9	-0-
Advance Transportation Co.	1983	14,740	510	321	152	51,868	1,039	223	538	98.0	5.67
	1982	13,085	436	226	162	49,239	869	97	639	98.2	2.09
American Frt. System, Inc.	1983	68,733	4,237	2,314	395	256,219	5,843	3,399	1,558	97.7	11.28
	1982	61,105	2,004	1,425	380	234,983	(206)	334	1,565	100.1	1.11
BN Transport, Inc.	1983	16,923	(824)	(898)	122	67,495	(2,918)	(2,688)	445	104.3	-0-
	1982	17,784	(68)	250	126	69,063	(420)	52	508	100.6	0.85
C. & H. Transportation Co., Inc.	1983	25,143	869	1	332	103,821	4,681	1,431	1,295	95.5	5.57
	1982	29,513	1,740	427	322	136,821	11,197	4,931	1,470	91.8	16.99
C.W. Transport, Inc.	1983	23,180	891	497	262	85,008	(827)	(224)	942	101.0	-0-
	1982	22,022	(168)	204	236	92,066	(17)	(171)	1,037	100.1	-0-
Campbell 66 Express	1983	19,725	685	(40)	152	77,947	918	1,350	585	98.8	7.41
	1982	19,228	838	437	148	84,199	1,805	(423)	669	97.9	-0-
Central Freight Lines, Inc.	1983	44,646	2,127	992	588	178,307	3,334	5,131	2,327	98.1	8.08
	1982	48,237	2,113	1,447	666	199,762	10,147	7,331	2,902	94.9	12.65

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 9 OF 13

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Chemical Express Carriers, Inc....	1983	$ 11,368	$ 749	$ 85	1,304	$ 46,482	$ 1,884	$ (264)	4,753	95.9	-0-
	1982	15,477	576	42	1,654	62,141	1,196	731	6,541	98.1	-0-
Churchill Truck Lines, Inc........	1983	18,066	1,678	716	126	63,625	3,008	1,739	464	95.3	22.98
	1982	14,971	577	406	113	56,640	95	348	463	99.8	4.92
Consolidated Freightways Corp.....	1983	282,412	28,892	14,722	1,109	1,073,029	75,730	40,554	4,398	92.9	12.24
	1982	266,096	18,480	13,212	1,136	1,018,433	66,658	50,415	4,401	93.5	16.30
Crete Carrier Corporation.........	1983	15,977	1,009	931	281	61,622	3,462	2,494	1,060	94.4	27.60
	1982	14,384	1,146	755	247	57,447	3,281	2,188	970	94.3	31.73
CRST, Inc.........................	1983	17,016	872	629	310	69,926	1,132	1,343	1,218	98.4	17.86
	1982	18,078	1,122	631	328	68,946	2,565	1,070	1,330	96.3	16.94
FFE Transportation Service........	1983	14,020	454	236	204	55,855	596	479	675	98.9	8.14
	1982	14,037	118	144	156	58,803	(1,871)	(509)	707	103.2	-0-
Garrett Freightlines, Inc.........	1983	41,948	2,805	7	283	158,926	6,946	4,928	1,094	95.6	18.15
	1982	37,194	1,043	610	262	148,430	5,741	4,306	1,005	96.1	11.28
Global Van Lines, Inc.............	1983	17,617	388	89	37	69,295	1,257	957	155	98.2	10.08
	1982	16,927	294	(197)	35	69,831	1,154	315	160	98.3	3.74
Graves Truck Lines................	1983	17,466	715	(383)	130	67,891	473	(1,302)	518	99.3	-0-
	1982	16,101	(644)	(418)	127	68,619	(2.619)	(1,667)	583	103.8	-0-

SHEET 10 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR	QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
WESTERN DISTRICT (CONTINUED)	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Groendyke Transportation, Inc.....1983	$ 13,765	$ 662	$ 345	877	$ 54,639	$ 2,209	$ 1,214	3,517	96.0	11.12
1982	14,347	334	139	937	60,031	2,162	1,592	3,823	96.4	16.31
Illinois-Calif. Express, Inc......1983	20,782	(509)	(874)	141	89,851	(1,982)	1,058	591	102.2	7.06
1982	23,156	(524)	(964)	145	106,449	(618)	(2,516)	668	100.6	-0-
IML Freight, Inc..................1983	27,908	(1,316)	(1,869)	127	125,910	(6,701)	(9,667)	570	105.3	-0-
1982	31,821	(2,658)	(3,506)	145	147,927	(7,053)	(11,119)	678	104.8	-0-
International Transport, Inc......1983	21,818	138	90	173	92,917	1,235	277	745	98.7	1.18
1982	31,456	1,949	745	251	132,538	5,687	2,009	925	95.7	8.61
Jones Truck Lines, Inc............1983	36,942	2,731	1,405	395	144,389	8,824	5,257	1,543	93.9	10.83
1982	28,574	1,968	1,024	306	110,351	6,958	4,906	1,179	93.7	10.26
Lee Way Motor Freight, Inc.........1983	38,895	(4,439)	(2,259)	237	176,566	(25,343)	(12,522)	1,086	114.4	-0-
1982	45,055	(4,400)	(2,205)	279	203,016	(16,660)	(7,356)	1,246	108.2	-0-
Lynden Transport, Inc.............1983	15,565	1,559	1,045	265	62,116	6,760	2,989	1,351	89.1	15.12
1982	18,832	1,503	1,276	210	67,078	6,963	6,618	1,457	89.6	34.21
Merchants Fast Motor Lines, Inc...1983	22,936	1,097	444	235	92,417	6,966	3,258	929	92.5	37.95
1982	25,184	2,204	1,088	258	106,043	10,543	5,255	1,105	90.1	58.72
Mid West Coast Transport, Inc.....1983	14,862	558	296	161	59,994	1,469	778	640	97.6	13.86
1982	14,761	595	273	155	62,697	1,967	1,015	652	96.9	20.50

SHEET 11 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
WESTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Midwestern Dist., Inc.	1983	$ 26,213	$ (479)	$ (178)	348	$ 81,619	$ (5,722)	$ (1,857)	1,280	107.0	-0-
	1982	16,285	(553)	(63)	127	61,602	(758)	204	962	101.2	1.35
Milne Truck Lines, Inc.	1983	19,679	138	(64)	142	77,892	(2,134)	(1,629)	555	102.7	-0-
	1982	15,662	(995)	(504)	113	69,533	(991)	(798)	523	101.4	-0-
Mistletoe Express Service	1983	16,916	386	61	78	71,908	1,551	94	270	97.8	0.85
	1982	12,638	707	187	50	47,561	2,198	949	204	95.4	7.36
Murphy Motor Freight Lines, Inc.	1983	23,427	582	130	190	84,416	(471)	(745)	710	100.6	-0-
	1982	20,422	52	(181)	160	79,978	(1,138)	(1,105)	662	101.4	-0-
Northwest Transport Service	1983	16,177	1,839	1,002	80	63,846	7,247	3,772	358	88.6	26.40
	1982	15,947	1,821	1,152	91	59,970	5,081	3,161	410	91.5	30.35
Overland Express, Inc.	1983	14,501	921	440	242	53,924	3,851	1,617	818	92.9	36.83
	1982	12,214	551	129	181	49,272	1,809	329	699	96.3	11.88
Pacific Intermountain Exp. Inc.	1983	89,647	3,182	2,459	678	381,369	718	(1,377)	3,137	99.8	-0-
	1982	101,971	655	326	854	416,357	1,292	2,244	3,604	99.7	4.24
Pacific Motor Trucking Company	1983	30,622	(869)	(1,186)	297	114,520	(10,490)	(11,564)	1,081	109.2	-0-
	1982	36,360	(3,062)	(3,385)	377	126,325	(14,834)	(15,310)	1,679	111.7	-0-
Red Arrow Freight Lines, Inc.	1983	11,331	(178)	(224)	157	45,777	1	297	622	100.0	3.44
	1982	12,046	217	116	170	50,000	1,301	940	711	97.4	11.29

SHEET 12 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)	QUARTER ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED JUNE 30 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Riss International Corporation....1983	$ 16,813	$ 169	$ 77	275	$ 76,106	$ (1,521)	$ (830)	1,266	102.0	-0-
1982	19,027	(174)	(100)	301	86,853	426	747	1,218	99.5	5.17
Santa Fe Trail Transport Company..1983	12,060	25	38	69	49,524	(906)	(90)	280	101.8	-0-
1982	14,158	134	91	71	59,205	2,469	1,431	286	95.8	15.00
Schneider Transport, Inc..........1983	41,115	1,285	570	839	162,927	10,333	5,613	3,145	93.7	93.43
1982	39,127	(440)	(235)	797	161,323	(2,885)	(1,233)	2,996	101.8	-0-
Schwerman Trucking Company........1983	15,103	525	173	1,297	58,114	436	(1,677)	4,937	99.3	-0-
1982	17,056	685	418	1,451	70,729	130	(2,594)	6,125	99.8	-0-
Willis Shaw Frozen Express, Inc...1983	12,288	778	322	130	51,519	2,985	1,286	529	94.2	8.68
1982	13,744	1,170	500	139	55,996	5,141	2,747	566	90.8	21.26
System 99.........................1983	17,107	1,104	717	95	62,734	184	(2,234)	370	99.7	-0-
1982	15,403	402	(454)	92	65,768	(1,767)	(3,827)	424	102.7	-0-
Transcon Lines....................1983	70,232	1,846	1,083	397	261,817	(1,037)	(1,457)	1,487	100.4	-0-
1982	64,648	(1,590)	(404)	351	254,539	(5,568)	(5,969)	1,366	102.2	-0-
Tri-State Motor Transit...........1983	27,802	1,590	711	248	103,986	1,314	157	915	98.7	0.79
1982	27,168	1,264	351	231	109,419	3,474	702	833	96.8	3.35
United Transport..................1983	17,594	1,256	735	334	57,723	138	(349)	1,094	99.8	-0-
1982	14,702	(106)	(256)	343	58,732	(1,245)	(1,786)	1,405	102.1	-0-

SHEET 13 OF 13

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED JUNE 30				TWELVE MONTHS ENDED JUNE 30					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
United Van Lines, Inc.	1983	$ 64,562	$ (47)	$ 281	109	$ 244,839	$ 404	$ 2,911	481	99.8	15.90
	1982	63,140	(614)	(81)	99	254,410	(1,945)	408	517	100.8	2.66
Total Western Carriers (45)	1983	1,492,989	62,430	27,236	14,930	5,857,966	100,195	34,538	58,553	98.3	3.61
	1982	1,506,424	28,176	11,988	15,525	6,085,469	86,082	39,225	65,039	98.6	3.79

1/ Net Carrier Operating Income - Difference between carrier operating revenues and carrier operating expenses.

2/ Net Income - Net income, after including fixed charges, non-operating income, income taxes, unusual or infrequent items, earnings attributable to discontinued segments, extraordinary items and cumulative effect of changes in accounting principles, but before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

3/ Revenue tons hauled reflect common and contract carrier service.

4/ Operating Ratio - Ratio of operating expenses to operating revenues.

5/ Return on Equity - Ratio of net income before net extraordinary charges for write-down of operating rights to shareholders' equity less intangible property at end of previous calendar year. The symbol -0- indicates a deficit in net income and/or shareholders' equity.

6/ The 100 carriers listed are generally the largest Class I U.S. motor carriers of property based upon revenues, with the following exceptions. Contract carriers are not included because the data filed by these carriers were substantially reduced in scope, in accordance with the Commission's revised reporting regulations, effective January 1, 1980. Also, the two largest motor carriers in terms of revenue generated, United Parcel Service, Inc. and United Parcel Service, Inc. (New York), are not included in this report because their operations are generally dissimilar from the carriers shown in this report and other carriers in the motor carrier industry. Several carriers which are among the 100 largest are not included in this report because their data had not been received when this report was prepared. Those carriers were replaced by large carriers which rank just below the 100 largest in size in order to arrive at a listing of 100 carriers.

7/ Effective January 20, 1983, Georgia Highway Express, Inc. changed its name to Transus, Inc.

8/ Data shown above for East Texas Motor Freight Lines, Inc. for the twelve months ended June 30, 1983 reflect operations from July 1, 1982 to September 30, 1982. Since this carrier merged into the ABF Freight System, Inc. in September 1982, the results of operations over its system from October 1, 1982 to June 30, 1983 are included in the data reported by and shown above for ABF Freight System, Inc. Although the data for East Texas is shown separately above, ABF and East Texas are considered one carrier for this report.

APPENDIX IV

interstate commerce commission
icc news
12th & constitution avenue nw □ washington dc 20423

FOR RELEASE:
August 11, 1983

(202) 275-7252
BROWN

NATION'S LARGEST TRUCKING COMPANIES REPORT INCREASED REVENUES AND IMPROVED EARNINGS FOR THE FIRST QUARTER OF 1983

The Nation's largest trucking companies reported increased revenues and improved earnings for the first quarter of 1983, according to a report released today by the Interstate Commerce Commission's Bureau of Accounts.

The report compares the earnings of 100 of the largest common carrier trucking companies for the quarter and twelve months ending March 31, 1983, with the corresponding periods in 1982. This report excludes the two United Parcel Service (UPS) carriers, whose operations are dissimilar and highly specialized, i.e., pick-up and delivery of small packages. The 100 carriers in this report account for about 44 percent of the total revenues generated by approximately 3,000 Class I and II regulated trucking companies.

A comparison of the first quarter operations shows that:

.... Operating revenues increased 2.3 percent to $3.5 billion.

.... Net carrier operating income increased substantially, from a 46.1 million loss in the 1982 period to a profit of $65.6 million in the first quarter of 1983.

.... Net income rose similarly, from a $38.5 million net loss to a $31.6 million net income.

.... Revenue tons hauled decreased 4.5 percent.

.... Of these 100 carriers, 56 reported increases in operating revenues, 72 reported improved net carrier operating income, 59 reported improved net income, and 41 reported increases in tonnage hauled.

A comparison of the results for the 12-month periods reveals that:

.... Operating revenues fell 2.5 percent to $15.3 billion; as revenue tons hauled declined 5.9 percent.

(more)

.... Net carrier operating income decreased 18.6 percent to $324 million.

.... Net income declined 30.3 percent to $158.9 million.

.... Operating ratio (ratio of operating expenses to operating revenues) increased to 97.9 percent from 97.5 percent.

.... Rate of return on shareholder's equity declined to 5.47 percent from 7.70 percent.

The net income discussed above and used in the computation of return on shareholders' equity represents net income before any net extraordinary charges for the write-down of operating rights.

This report is based primarily upon quarterly reports submitted to the Commission. The figures have not been verified by the ICC.

Copies of this report can be obtained from the Office of the Secretary, Publications Room B-229, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 275-7833.

ICC

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS
WASHINGTON, D.C. 20423

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 1 OF 14

DISTRICT, CARRIER AND YEAR		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Eastern District Total (33)......	1983	$1,466,811	$ 37,010	$ 24,953	14,623	$6,242,310	$178,043	$113,842	62,150	97.1	8.31
	1982	1,404,599	(5,097)	(512)	15,143	6,265,405	174,493	130,401	67,227	97.2	9.50
Southern District Total (20).....	1983	799,207	27,162	12,607	8,790	3,230,224	84,388	30,024	35,307	97.4	5.47
	1982	741,695	(5,422)	(10,543)	8,412	3,282,320	95,295	37,379	36,491	97.1	7.14
Western District Total (47)......	1983	1,344,341	1,443	(5,957)	12,806	5,795,769	61,611	15,082	56,373	98.9	1.53
	1982	1,382,570	(35,567)	(27,523)	14,363	6,126,057	128,426	60,349	65,157	97.9	5.66
Total All Carriers 6/..........	1983	3,610,379	65,615	31,603	36,219	15,268,303	323,962	158,948	153,830	97.9	5.47
	1982	3,528,864	(46,086)	(38,578)	37,918	15,673,782	398,214	228,129	168,875	97.5	7.70
INDIVIDUAL CARRIERS DATA EASTERN DISTRICT											
A P A Transport Corp..............	1983	20,147	3,766	1,762	106	81,893	14,360	6,748	421	82.5	25.84
	1982	19,726	3,330	1,533	103	76,665	12,263	5,991	423	84.0	28.65
Ace Doran Hauling & Rigging Co....	1983	7,963	78	81	218	38,675	1,766	1,194	1,014	95.4	12.89
	1982	10,446	141	129	206	58,473	977	523	1,306	98.1	6.33
Aero Mayflower Transit Co., Inc...	1983	39,868	(1,001)	(576)	77	202,488	5,831	3,885	377	97.1	17.87
	1982	39,586	(1,529)	(900)	81	200,129	3,276	2,715	390	98.4	14.86
Allied Van Lines, Inc	1983	54,486	(1,220)	(242)	105	276,099	(115)	2,166	506	100.0	13.06
	1982	52,435	(1,906)	(617)	102	296,382	(1,029)	1,955	575	100.3	10.74
Associated Truck Lines, Inc.......	1983	49,155	(253)	(170)	490	190,705	406	39	1,924	99.8	0.13
	1982	41,567	(3,148)	(1,634)	444	179,496	(3,181)	(24)	1,885	101.8	-0-

SHEET 2 OF 14

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Atlas Van Lines, Inc.	1983	$24,207	$ 351	$ 202	52	$126,667	$ 4,506	$ 4,776	231	96.4	16.80
	1982	25,490	243	320	54	128,573	3,273	5,527	254	97.5	23.24
Bekins Van Lines Company	1983	31,174	(874)	(197)	58	171,172	4,064	3,745	314	97.6	15.76
	1982	34,499	(540)	(134)	63	165,042	3,506	2,020	313	97.9	14.19
F.J. Boutell Driveaway Co., Inc.	1983	3,324	10	(5)	30	40,404	1,322	61	354	96.7	0.42
	1982	12,227	31	64	105	51,758	1,606	1,175	455	96.9	8.11
Branch Motor Express Company	1983	29,350	(1,614)	747	305	125,504	(6,225)	(6,360)	1,253	105.0	-0-
	1982	32,728	(4,066)	(4,641)	337	146,761	(8,202)	(7,375)	1,574	105.6	-0-
Central Transport, Inc.	1983	43,693	2,856	3,105	1,018	149,208	3,949	4,048	3,634	97.4	42.65
	1982	31,370	(136)	190	766	124,263	(4,972)	(2,212)	3,179	104.0	-0-
Chemical Leaman Tank Lines, Inc.	1983	35,226	(307)	(646)	1,239	145,046	(2,601)	(3,310)	5,278	101.8	-0-
	1982	41,636	987	(71)	1,350	167,046	3,869	(725)	5,668	97.7	-0-
Coastal Tank Lines	1983	14,500	8	(752)	625	62,504	(139)	(3,043)	3,467	100.2	-0-
	1982	18,388	(563)	(1,189)	752	76,226	2,842	(553)	4,034	96.3	-0-
Commercial Carriers, Inc.	1983	31,114	1,590	1,122	493	103,920	4,475	4,269	1,776	95.7	18.06
	1982	23,278	420	267	440	94,344	4,715	2,561	1,861	95.0	11.93

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED MARCH 31 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Commercial Lovelace Motor	1983	$ 14,876	$(1,549)	$(1,106)	123	$ 61,888	$ (6,670)	$ (5,917)	549	110.8	-0-
Freight, Inc.	1982	17,846	(2,491)	(1,625)	173	81,918	(6,460)	(4,849)	786	107.9	-0-
Daily Express, Inc.	1983	8,283	363	119	147	35,753	1,946	859	643	94.6	29.42
	1982	10,405	521	239	177	45,406	3,205	1,595	680	92.9	40.59
Duff Truck Line, Inc.	1983	12,873	(512)	(690)	175	52,700	(1,861)	(2,245)	688	103.5	-0-
	1982	13,332	(626)	(823)	176	57,142	(648)	(980)	787	101.1	-0-
Hall's Motor Transit Co.	1983	49,832	(1,583)	(2,480)	408	215,927	(7,406)	(9,248)	1,814	103.4	-0-
	1982	49,240	(3,766)	(2,644)	454	225,195	(9,838)	(8,300)	2,402	104.4	-0-
Holland Motor Express, Inc.	1983	15,446	1,070	647	134	59,778	4,334	2,685	538	92.8	15.72
	1982	11,597	38	111	145	58,344	3,079	2,269	650	94.7	14.45
Holmes Transportation, Inc.	1983	12,855	(821)	(790)	152	54,603	40	459	619	99.9	3.82
	1982	12,488	(854)	(908)	155	56,189	536	356	672	99.0	3.05
IU S, Inc.	1983	42,695	(3,464)	(4,519)	273	214,675	(13,753)	(17,827)	1,975	106.4	-0-
	1982	51,693	(3,408)	(2,949)	569	247,447	(8,073)	(4,246)	2,694	103.3	-0-
Jones Transfer Company	1983	13,296	1,006	831	273	48,662	122	(372)	1,022	99.7	-0-
	1982	13,594	(735)	(877)	262	51,511	(948)	(1,308)	(1,065)	101.8	-0-
M&G Convoy, Inc.	1983	15,979	68	21	187	61,430	294	263	673	99.5	2.68
	1982	14,143	(93)	(122)	152	63,055	3,785	1,874	678	98.0	19.31

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR EASTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Matlack, Inc.	1983	$ 16,201	$ (93)	$ (402)	1,560	$ 150,031	$ 1,231	$ (1,701)	6,767	99.2	-0-
	1982	42,333	1,537	210	1,772	189,561	14,506	6,054	8,704	92.3	14.35
National Freight, Inc.	1983	18,958	(521)	143	291	79,073	152	1,276	1,200	99.8	21.41
	1982	18,045	(532)	(391)	354	78,648	112	643	1,699	99.9	12.34
No. American Van Lines, Inc.	1983	98,525	1,018	2,347	470	492,510	17,785	19,548	2,156	96.4	14.91
	1982	97,208	3,464	4,249	415	496,108	25,341	27,179	1,930	94.9	18.18
Nu Car Carriers, Inc.	1983	20,608	241	(119)	393	84,042	2,279	764	1,603	97.3	20.85
	1982	15,804	(188)	(643)	296	69,312	2,322	84	1,293	96.1	2.45
Preston Trucking Company, Inc.	1983	59,480	1,789	911	601	226,713	7,476	5,515	2,378	96.7	8.25
	1982	50,815	458	541	517	199,459	7,133	5,298	2,097	96.4	7.59
Red Star Express Lines	1983	23,117	1,976	560	170	91,062	7,789	3,197	684	91.4	9.25
	1982	20,497	514	99	174	84,040	4,915	3,757	705	94.1	10.36
Refiners Transport & Terminal	1983	10,966	(607)	(955)	1,396	49,043	(268)	(2,523)	6,149	100.5	-0-
	1982	12,253	(363)	(445)	1,521	52,702	1,357	1,752	5,037	93.6	11.24
Roadway Express, Inc.	1983	271,589	23,664	19,186	1,115	1,164,492	94,373	80,427	4,087	91.9	16.72
	1982	254,556	12,867	12,996	1,130	1,113,735	83,221	68,501	4,034	92.5	16.41
St. Johnsbury Trucking Co., Inc.	1983	43,047	1,732	596	341	178,545	11,334	6,068	1,415	93.7	21.85
	1982	31,771	612	(22)	272	140,806	4,797	4,801	1,185	96.6	19.01

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 5 OF 14

DISTRICT, CARRIER AND YEAR		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
EASTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Smiths Transfer Corporation.......	1983	$ 75,108	$ 915	$ 851	526	$ 279,291	$ (1,372)	$ (1,502)	1,915	100.5	-0-
	1982	66,240	(2,033)	(567)	401	205,064	5,445	2,390	2,053	98.1	4.11
Yellow Freight System, Inc.........	1983	218,458	8,898	5,371	1,056	927,737	20,699	15,978	4,186	96.9	7.40
	1982	214,283	(3,311)	(249)	1,065	911,085	19,333	11,153	4,471	97.9	5.12
Total Eastern Carriers (11).....	1983	1,466,811	37,818	24,951	14,623	6,242,318	178,043	111,842	62,150	97.1	8.31
	1982	1,404,599	(5,097)	(512)	15,143	6,265,405	174,493	130,401	67,227	97.2	9.50
SOUTHERN DISTRICT											
ANA Cooper Transportation........	1983	13,579	1,447	704	135	53,009	1,327	122	540	97.5	1.18
	1982	11,671	971	667	133	47,951	3,805	1,939	540	92.1	17.90
Bowman Transportation, Inc.......	1983	34,034	179	304	411	138,022	(3,254)	(839)	1,489	102.5	-0-
	1982	31,229	(579)	(251)	359	151,497	1,252	1,637	1,733	99.2	3.05
Brown Transport Corp.............	1983	35,435	1,826	1,400	526	138,153	7,220	4,820	1,933	93.8	43.49
	1982	35,251	1,979	1,420	488	141,615	7,519	5,243	1,946	94.7	39.88
Carolina Freight Carriers Corp...	1983	69,805	3,768	1,817	435	288,624	15,115	7,704	1,808	94.6	20.18
	1982	57,355	638	137	401	258,037	9,946	4,568	1,876	96.1	13.62
Lyon Specialized Haulers.... ...	1983	17,468	(155)	(205)	415	67,291	28	(728)	1,597	100.0	-0-
	1982	16,516	106	(39)	375	83,779	(4,005)	(3,793)	1,777	104.8	-0-

SHEET 6 OF 14

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR SOUTHERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Mason & Dixon Lines, Inc.	1983	$ 33,700	$ 235	$ (12)	350	$147,727	$ (6,541)	$ (9,160)	1,451	104.4	-0-
	1982	34,987	(1,717)	(1,594)	354	171,295	146	(1,996)	1,659	99.9	-0-
McLean Trucking Company	1983	120,123	(3,640)	(1,749)	679	492,196	(16,197)	(9,957)	2,695	103.3	-0-
	1982	119,817	(9,811)	(9,059)	664	561,038	(15,042)	(12,220)	3,146	102.7	-0-
Melton Truck Lines, Inc.	1983	9,922	(229)	29	306	47,605	79	403	1,370	99.8	4.22
	1982	10,507	(745)	(353)	310	49,879	(387)	73	1,245	100.8	0.77
Old Dominion Freight Lines, Inc. ...	1983	30,768	1,057	990	462	112,851	5,440	2,353	1,805	95.2	18.44
	1982	22,957	(49)	(806)	397	96,033	1,634	(104)	1,684	98.3	-0-
Overnite Transportation Company...	1983	77,472	9,606	5,407	728	296,889	39,212	21,922	2,738	86.8	16.80
	1982	68,403	3,116	1,900	673	209,383	35,594	20,089	2,903	87.7	13.22
Pilot Freight Carriers, Inc... ...	1983	41,155	(2,540)	(2,765)	336	160,382	(7,836)	(8,692)	3,252	104.9	-0-
	1982	34,808	(2,080)	(1,913)	258	147,361	(4,538)	(3,123)	1,087	101.1	-0-
Poole Truck Line, Inc.	1983	14,520	1,693	1,135	535	58,492	5,055	3,198	2,312	90.0	24.70
	1982	11,387	(634)	(1,274)	507	51,773	3,040	709	2,260	92.6	5.46
RIC Transportation, Inc.	1983	34,570	1,331	568	595	155,572	6,390	2,262	2,669	95.9	17.15
	1982	36,426	1,217	472	615	138,890	3,743	1,058	2,174	97.3	9.11
Ryder Truck Lines, Inc.	1983	155,754	4,650	1,665	1,268	633,410	15,276	6,151	5,318	97.6	9.43
	1982	146,579	(909)	(1,125)	1,316	630,544	23,629	10,703	5,861	96.3	16.08

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR SOUTHERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Saia Motor Freight Line, Inc.......	1981	$ 11,206	$ 1,560	$ 889	123	$ 47,625	$ 5,645	$ 3,430	515	88.1	19.52
	1982	11,909	1,042	719	114	50,145	6,110	3,529	562	87.8	24.42
Southeastern Freight Lines.........	1981	13,018	1,494	1,398	152	51,440	4,205	3,794	601	91.8	36.17
	1982	12,232	729	584	162	53,512	3,414	2,774	713	93.6	26.78
The Motor Convoy, Inc..............	1981	14,633	49	(121)	642	57,176	12	831	2,119	100.0	54.17
	1982	13,528	24	(162)	594	59,203	2,273	1,521	2,236	96.2	65.42
Thurston Motor Lines, Inc..........	1981	21,814	635	(278)	281	98,195	3,517	(1,352)	1,300	96.4	-0-
	1982	20,963	40	(692)	279	94,418	5,756	(603)	1,226	93.9	-0-
Transus, Inc. 7/....................	1981	22,735	1,288	405	231	88,775	3,448	1,674	971	96.1	7.50
	1982	20,897	140	95	252	89,914	5,354	2,664	1,112	94.0	20.34
Watkins Motor Lines................	1981	27,506	2,116	1,046	180	114,790	5,367	2,008	744	95.3	17.62
	1982	24,073	1,100	731	161	108,033	5,252	2,819	743	95.1	25.68
Total Southern Carriers(20).....	1981	799,207	27,162	12,607	8,790	3,230,224	84,308	30,024	35,307	97.4	5.47
	1982	741,695	(5,422)	(10,543)	8,412	3,282,320	95,295	37,379	36,491	97.1	7.14
WESTERN DISTRICT											
ABF Freight System, Inc............	1981	84,105	(1,092)	(2,315)	508	321,844	(1,697)	(12,065)	1,973	100.5	-0-
	1982	65,243	(4,085)	(2,350)	430	288,234	1,898	(813)	1,965	99.3	-0-

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
East Texas Motor Freight Lines, Inc. 8/	1983	$ -0-	$ -0-	$ -0-	-0-	$ 75,301	$ (9,152)	$ (1,914)	464	112.4	- -
	1982	46,077	(6,227)	(2,970)	324	196,683	(14,079)	(8,100)	1,301	107.2	-0-
Advance Transportation Company	1983	12,547	255	48	123	50,213	965	128	548	98.1	3.26
	1982	11,911	(314)	(528)	153	48,378	1,171	338	664	97.6	7.29
American Freight System, Inc.	1983	62,130	11	57	390	248,591	3,610	2,510	1,542	98.5	0.33
	1982	55,172	(4,514)	(2,416)	379	234,229	(1,257)	(654)	1,607	100.5	-0-
BN Transport, Inc.	1983	16,363	(1,296)	(1,372)	105	68,355	(2,163)	(1,540)	449	103.2	-0-
	1982	16,259	(828)	(536)	119	68,509	179	(56)	509	99.7	-0-
C.RH. Transportation Co., Inc.	1983	23,489	100	(296)	333	108,191	5,552	1,057	1,205	94.9	7.23
	1982	31,707	1,711	520	337	146,691	13,880	6,395	1,556	90.5	22.04
C.W. Transport, Inc.	1983	20,533	(375)	(302)	238	83,850	(1,886)	(517)	916	102.2	-0-
	1982	21,157	(1,322)	(860)	246	96,652	1,840	726	1,121	98.1	2.64
Campbell 66 Express	1983	16,866	49	239	131	77,450	1,071	1,827	578	98.6	10.03
	1982	18,129	(958)	(1,039)	148	85,400	1,824	(324)	698	97.9	-0-
Central Freight Lines, Inc.	1983	42,792	997	902	553	181,898	3,320	5,586	2,405	98.2	8.80
	1982	48,639	1,971	1,456	607	202,849	11,998	8,290	3,062	94.1	14.30
Chemical Express Carriers, Inc.	1983	9,743	129	(252)	1,066	50,591	1,711	(307)	5,103	96.6	-0-
	1982	14,298	236	(203)	1,403	62,232	1,201	837	6,422	98.1	-0-

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Churchill Truck Lines, Inc.	1983	$ 15,777	$ 742	$ 663	119	$ 60,530	$ 1,907	$ 1,509	451	96.8	19.94
	1982	13,818	(299)	(344)	114	54,986	212	245	468	99.6	3.47
Consolidated Freightways Corp.	1983	261,447	14,715	8,768	1,083	1,056,713	65,318	39,044	4,426	93.8	11.78
	1982	241,560	6,522	6,435	1,071	1,003,783	68,174	49,088	4,346	93.2	15.88
CRST, Inc.	1983	16,673	89	120	273	70,895	1,056	890	1,236	98.5	11.84
	1982	17,712	481	433	340	66,832	1,878	1,218	1,328	97.2	19.28
Dallas & Mavis Forwarding Co., ... Inc.	1983	8,077	46	8	110	35,798	337	82	542	99.1	1.20
	1982	11,078	(1)	(21)	175	49,982	1,314	600	826	97.4	10.71
IIE Transportation Services, Inc. ..	1983	13,911	161	117	164	55,872	260	817	627	99.5	6.58
	1982	13,915	(415)	(146)	142	61,410	(1,906)	(654)	725	103.1	-0-
Garrett Freightlines, Inc.	1983	40,055	1,176	3,544	285	154,172	5,186	5,531	1,073	96.6	20.37
	1982	34,141	215	95	250	152,723	7,365	5,123	1,006	95.2	13.42
Global Freightlines, Inc.	1983	14,585	(89)	(85)	33	68,605	1,163	671	153	98.3	7.07
	1982	14,177	(133)	(312)	37	71,472	1,607	1,016	165	97.8	12.07
Graves Truck Lines	1983	16,470	(131)	(299)	130	66,526	(886)	(1,337)	514	101.3	-0-
	1982	15,672	(563)	(280)	130	71,890	1,895	1,307	643	102.6	-0-
Greendyke Transport, Inc.	1983	11,354	129	45	720	55,221	1,881	1,000	3,577	96.6	9.24
	1982	13,217	317	189	804	62,145	2,931	2,036	3,866	95.3	20.86

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	TWELVE MONTHS ENDED MARCH 31 Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Illinois-Calif. Express, Inc.	1983	$ 20,500	$ (1,158)	$ (1,486)	141	$ 92,225	$ (1,997)	$ 968	594	102.2	6.46
	1982	22,877	(1,123)	(1,544)	146	109,216	346	(1,611)	608	99.7	-0-
IML Freight, Inc.	1983	26,202	(352)	(884)	122	129,823	(8,043)	(11,304)	588	106.2	-0-
	1982	29,479	(3,150)	(3,978)	135	156,726	(5,691)	(9,960)	727	103.6	0-
International Transport, Inc.	1983	19,734	48	(361)	157	102,555	3,046	933	717	97.0	3.97
	1982	30,733	797	93	336	140,850	6,396	2,313	1,059	95.5	9.92
Jones Truck Lines, Inc.	1983	32,505	1,523	812	352	136,021	8,061	4,876	1,454	94.1	10.05
	1982	24,762	551	302	265	105,025	6,207	4,631	1,134	94.1	9.69
Lee Way Motor Freight, Inc.	1983	37,156	(6,150)	(3,251)	236	182,726	(25,304)	(12,002)	1,129	113.8	-0-
	1982	42,362	(7,105)	(2,887)	263	210,144	(14,110)	(5,483)	1,296	106.7	-0-
Lynden Transport, Inc.	1983	12,900	684	250	319	65,383	6,704	3,220	1,296	89.7	16.28
	1982	15,946	1,659	1,005	455	61,815	7,108	6,088	1,662	88.5	35.61
Merchants Fast Motor Lines, Inc.	1983	21,807	566	152	227	94,665	8,073	3,902	952	91.5	45.45
	1982	25,435	2,308	1,135	273	107,732	12,336	5,923	1,150	88.7	66.18
Midwest Coast Transport, Inc.	1983	14,475	52	12	155	59,893	1,506	755	633	97.5	13.45
	1982	15,112	(17)	(83)	156	64,942	2,093	1,357	680	96.8	23.37
Midwestern Distribution, Inc.	1983	21,568	(2,044)	(896)	298	71,691	(5,796)	(1,742)	1,059	108.1	-0-
	1982	15,178	(357)	(67)	291	61,008	303	447	1,126	99.5	2.96

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 11 OF 14

DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Milne Truck Lines, Inc.	1983	$ 17,727	$ (348)	$ (300)	132	$ 73,875	$ (3,267)	$ (2,069)	526	104.4	-0-
	1982	15,174	(669)	(508)	119	69,768	34	(569)	529	100.0	-0-
Mistletoe Express, Service	1983	15,983	713	208	54	67,630	1,872	220	242	97.2	1.99
	1982	11,644	668	327	49	45,752	2,091	909	208	95.4	7.05
Murphy Motor Freight Lines, Inc.	1983	20,696	(709)	(493)	179	81,411	(1,001)	(1,056)	680	101.2	-0-
	1982	18,333	(1,187)	(773)	154	88,687	(857)	(878)	676	101.1	-0-
Northwest Transport Service, Inc.	1983	15,008	1,407	776	80	63,616	7,229	3,922	369	88.6	27.45
	1982	14,321	1,136	718	101	58,117	4,734	2,888	427	91.9	27.73
Overland Express, Inc.	1983	13,524	854	303	199	51,637	3,481	1,306	757	93.3	29.75
	1982	12,679	447	43	174	49,276	1,675	452	661	96.6	16.32
Pacific Intermountain Express Co.	1983	89,920	(2,719)	(2,966)	709	391,693	(1,809)	(3,510)	3,314	100.5	-0-
	1982	90,701	(7,006)	(3,318)	705	420,508	3,223	3,056	3,736	99.2	5.78
Pacific Motor Trucking Company	1983	27,649	(2,309)	(2,451)	265	170,258	(12,682)	(13,763)	1,162	110.5	-0-
	1982	39,247	(5,510)	(5,502)	455	118,628	(14,389)	(15,342)	1,812	112.1	-0-
Red Arrow Freight Lines, Inc.	1983	11,598	52	(5)	160	46,492	396	637	634	99.1	7.37
	1982	12,046	109	109	178	50,879	1,592	1,093	731	96.9	13.12
Kiss International Corp.	1983	15,705	(419)	(252)	256	78,320	(1,856)	(999)	1,292	102.4	-0-
	1982	18,297	(311)	(236)	228	88,650	1,056	1,031	1,230	98.8	7.14

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 12 OF 14

		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Santa Fe Trail Transport Co.	1983	$ 11,770	$ (925)	$ (461)	69	$ 51,622	$ (727)	$ (41)	292	101.5	-0-
	1982	14,810	(17)	13	72	59,210	2,611	1,451	296	95.6	15.21
Schwerman Trucking Company	1983	11,427	(759)	(954)	928	60,067	596	(1,432)	5,091	99.0	-0-
	1982	12,431	(1,675)	(2,030)	950	75,545	(300)	(3,685)	6,651	100.5	-0-
Willis Shaw Frozen Express, Inc.	1983	12,105	596	221	126	52,975	3,377	1,464	537	93.6	9.88
	1982	14,020	904	659	138	57,055	5,065	2,702	574	91.1	21.54
System 99	1983	14,892	(54)	(639)	90	61,018	(518)	(3,405)	367	100.8	-0-
	1982	13,984	(407)	(1,196)	85	71,002	(2,470)	(4,051)	467	103.5	-0-
Sam Tanksley Trucking, Inc.	1983	8,917	(125)	(47)	70	40,514	4,700	1,957	319	88.2	15.96
	1982	10,566	(210)	(61)	84	50,817	5,466	2,131	409	89.2	20.65
Transcon Lines	1983	62,559	(1,922)	(2,509)	381	$ 256,231	(4,473)	(4,340)	1,442	101.7	-0-
	1982	55,735	(4,798)	(5,610)	324	259,303	(2,712)	(5,235)	1,369	101.1	-0-
Tri-State Motor Transit Company	1983	24,667	(200)	(311)	216	103,352	909	(202)	898	99.0	-0-
	1982	24,347	(660)	(834)	199	116,109	4,160	1,267	829	96.4	6.05
United Transport	1983	13,614	157	29	290	54,831	(1,224)	(1,340)	1,105	102.2	-0-
	1982	13,056	(499)	(503)	331	66,120	701	(675)	1,530	98.9	-0-
United Van Lines, Inc.	1983	48,953	(1,120)	(377)	97	243,417	(163)	2,549	471	100.1	13.92
	1982	40,633	(1,710)	(720)	97	257,519	(1,313)	612	517	100.5	4.00

LARGE CLASS I MOTOR CARRIERS OF PROPERTY SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 13 OF 14

		QUARTER ENDED MARCH 31				TWELVE MONTHS ENDED MARCH 31					
DISTRICT, CARRIER AND YEAR WESTERN DISTRICT (CONTINUED)		Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Revenues	Net Carrier Operating Income 1/	Net Income 2/	Revenue Tons Hauled 3/	Operating Ratio 4/ (Percent)	Return on Equity Less Intangible Prop. (Percent) 5/
Warren Transport, Inc.	1983	8,385	610	412	122	37,513	2,170	1,873	544	94.2	16.17
	1982	10,617	733	705	131	49,090	3,340	3,305	626	93.2	22.76
Wheaton Van Lines, Inc.	1983	$ 5,821	$ (108)	$ 35	11	$ 31,585	$ 988	$ 987	57	97.1	9.03
	1982	6,133	(140)	23	11	39,110	1,688	1,501	71	95.7	14.99
Total Western Carriers (47)	1983	1,344,341	1,411	(5,957)	12,806	5,795,769	61,611	15,082	56,373	98.9	1.53
	1982	1,302,570	(35,567)	(27,523)	14,363	6,126,057	128,426	60,349	65,157	97.9	5.66

1/ Net Carrier Operating Income - Difference between carrier operating revenues and carrier operating expenses.

2/ Net Income - Net income, after including fixed charges, non-operating income, income taxes, unusual or infrequent items, earnings attributable to discontinued segments, extraordinary items and cumulative effect of changes in accounting principles, but before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

3/ Revenue tons hauled reflect common and contract carrier service.

4/ Operating Ratio - Ratio of operating expenses to operating revenues.

5/ Return on Equity - Ratio of net income before net extraordinary charges for write-down of operating rights to shareholder's equity less intangible property at end of previous calendar year. The symbol -D- indicates a deficit in net income and/or shareholders' equity.

6/ The 100 carriers listed are generally the largest class I U.S. motor carriers of property based upon 1981 revenues, with the following exceptions. Contract carriers are not included because the data filed by these carriers were substantially reduced in scope, in accordance with the Commission' revised reporting regulations, effective January 1, 1980. Also, the two largest motor carriers in terms of revenue generated, United Parcel Service, Inc. and United Parcel Service, Inc. (New York), are not included in this report because their operations are generally dissimilar from the carriers shown in this report and other carriers in the motor carrier industry. Several carriers which are among the 100 largest are not included in this report because their data had not been received when this report was prepared. Those carriers were replaced by large carriers which rank just below the 100 largest in size in order to arrive at a listing of 103 carriers.

7/ Effective January 20, 1983, Georgia Highway Express, Inc. changed its name to Transus, Inc.

8/ Data shown above for East Texas Motor Freight Lines, Inc. for the twelve months ended March 31, 1983 reflect operations from April 1, 1982 to September 30, 1982. Since this carrier merged into the ABF Freight System, Inc. in September 1982, the results of operations over its system from October 1, 1982 to March 31, 1983 are included in the data reported by and shown above for ABF Freight System, Inc. Although the data for East Texas is shown separately above, ABF and East Texas are considered one carrier for this report.

Table

[illegible] OF GENERAL FREIGHT ESTIMATED IMPACT ON ALL PARTICIPATING CARRIERS OF GENERAL RATE [illegible] RESTRUCTURE, TAKING EFFECT IN FISCAL 1983.
(Dollars in Thousands)

Rate Bureau (1)	Effective Date (2)		General Rate Increases			Restructured Rates		Cumulative Increases	
			Dollars (3)	% (4)		Dollars (5)	% (6)	Dollars (7)	% (8)
Central & Southern	10/27/82	(1)	$ 35,812	5.2		-	-		
"	4/1/83		$ 64,418	6.6		-	-		
"	7/31/83		-	-	(2)	$ 2,100	0.2		
"	9/6/83		-	-	(1)	$ 5,000	2.7	$107,330	14.7
Central States	1/31/83		$ 25,811	2.3		-	-		
"	4/1/83		$ 63,658	4.9		-	-		
"	7/25/83		-	-	(1)	$ 3,779	3.2	$ 93,248	10.4
Eastern Central	11/8/82		$142,999	7.1		-	-		
"	1/3/83		-	-	(2)	$ 999	0.05		
"	4/1/83		$136,951	6.4		-	-		
"	6/20/83		-	-		$ 2,360	0.1	$283,309	13.6
Middle Atlantic	11/22/82		$ 24,700	2.0		-	-		
"	4/1/83		$ 65,068	5.4		-	-	$ 89,768	7.4
Middlewest	4/1/83		$156,500	6.4		-	-	$156,500	6.4
New England	4/1/83		$ 28,626	5.7		-	-	$ 28,626	5.7
Pacific Inland	4/1/83		$ 5,981	5.3		-	-	$ 5,981	5.3
Rocky Mountain	11/29/82		-	-		$ 68,770	2.3		
"	4/1/83		$136,956	4.5		-	-		
"	7/25/83		-	-	(2)	$ 43,800	1.6	$249,526	8.4
Southern	11/15/82		$221,000	3.9		-	-		
"	4/1/83		$103,208	5.9					
"	7/31/83		-	-	(2)	$ 40,938	1.3	$365,146	11.1
TOTAL:			$1,190,366	71.6		$167,746	11.45	$1,358,112	83.0
AVERAGE PER BUREAU:				7.9			1.3		9.2

Explanation of Letter References:

(I) - Increase did not apply on rates subject to shipments weighing 10,000 pounds or more.
([illegible]) - Involved conversion from rate base numbers to broader "zip code" groupings.
(L) - Involved conversion to a single less-than-truckload (LTL) rating concept; namely, cancellation of truckload rates and minimum weights, and establishment of higher minimum weights under LTL classes.

Mr. ANDERSON. Please proceed.

TESTIMONY OF INTERSTATE COMMERCE COMMISSION: CHAIRMAN REESE H. TAYLOR, JR., VICE CHAIRMAN MALCOLM M. B. STERRETT, COMMISSIONER FREDERIC N. ANDRE, COMMISSIONER HEATHER J. GRADISON, JANICE ROSENAK, LEGISLATIVE COUNSEL, J. WARREN McFARLAND, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE, AND HOWELL SPORN, OFFICE OF PROCEEDINGS

Mr. TAYLOR. Let me begin by introducing the people at the table with me this morning. Although you may know my colleagues, I would like to introduce them for the record.

Vice Chairman Malcolm Sterrett, Commissioner Frederic Andre, and Commissioner Heather Gradison. Also with me on my left is Warren McFarland, Director of the Commission's Office of Compliance and Consumer Assistance, and on my right is the Commission's Legislative Counsel, Janice Rosenak.

I want to thank you for the opportunity to appear here today to present the views of the Commission with regard to the implementation and effects of motor carrier, bus, and household goods legislation.

In addition to our full statement, appendixes are included which provide additional information on Commission proceedings and also a package of studies and reports issued either in response to congressional mandates under the various acts, or as part of the Commission's ongoing effort to monitor the effects of the legislation.

First, I will discuss trucking issues. As you will recall, at prior oversight hearings, the Commission has testified that the trucking industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980. I would like to reaffirm that view today.

Despite the serious financial difficulties that some freight carriers were experiencing at the time of last year's hearing on June 23, 1982, we reported that the significant reforms of the Motor Carrier Act—namely, eased entry, rate flexibility, and reduced antitrust immunity—were being achieved. Clearly, the environment in the trucking industry had already become more competitive last year. With regard to the industry's declining financial performance, the Commission noted at the last hearing that economic conditions, rather than regulatory reform, appeared to be the principal cause.

I am pleased to report that the latest figures indicate that the trucking industry's financial picture has improved. As we predicted, the carriers' earnings are improving along with the general recovery in the economy.

At this point, I would like to highlight some of the indicators that have led the Commission to conclude, for the third year, that the Motor Carrier Act reforms are indeed working.

Since the effective date of the act on July 1, 1980, 19,493 new carriers have received authority from the Commission. Over 63,031 new certificates have been served during the same period. As expected, applications appear to have leveled off and are presently being filed at a rate of approximately 1,100 each month.

Overall, shipper satisfaction with the level of service remains high. Complaints continue at a low level. For fiscal year 1983, complaint levels concerning motor carriers of property ranged from a high of 1,020 in March to a low of 631 in September. In fiscal year 1983, the total number of complaints against motor carriers of property declined more than 5,000, compared to the number received in fiscal year 1982. And both years are substantially below pre-Motor Carrier Act levels.

Even more significant, however, in measuring the success of the act, is the status of service to small communities, since this was the area that most people were concerned about as a result of regulatory reform.

At the last hearing, we reported to this committee that motor carrier service to small communities had not been curtailed, and that, if anything, such service had improved. This conclusion was based on a report, mandated by section 28 of the Motor Carrier Act, entitled the "Small Community Service Study," released September 1, 1982.

We summarized the results of our study at the June 1982 oversight hearing, since the report had not quite been completed yet. We are submitting a copy of the final report to the subcommittee today. To summarize it briefly, of the shippers surveyed in the Commission's nationwide small community survey, 9 percent to 20 percent said more service was available now than before the act, 77 percent to 90 percent said the availability of for-hire truck service was unchanged, and only 2 percent to 5 percent said less service was available now. With respect to freight claims, 85 percent to 97 percent of those shippers surveyed indicated either that they had no claims or that there had been no change in their ability to resolve the claims. Three percent to 8 percent indicated more problems, and 1 percent to 9 percent indicated fewer problems with respect to claims. We have no reason to believe that these results have changed. In fact, a recent study conducted by DOT supports our conclusions.

Turning to the trucking industry's financial performance, as I mentioned earlier, the monitoring program conducted by our Bureau of Accounts indicates that there has been an improvement in the financial condition of freight carriers which parallels the turnaround in the economy. Tonnage levels did continue to decline somewhat, but the decrease was much less than we reported last year.

With regard to rates, there has been greater pricing innovation and a dramatic increase in independent ratemaking since passage of the Motor Carrier Act. The number of independent actions is up, as is the number of motor carrier filings. In fiscal year 1982, 180,829 independent rate actions were reported by major rate bureaus. The figure for fiscal year 1983 is 230,184. Motor carrier filings for this fiscal year increased to 1,061,847 compared to 725,864 in fiscal year 1982. The vast majority of the filings are rate reductions. Thus, it appears that the act has had its intended effect of increasing competition and providing greater ratemaking flexibility.

Turning to the Commission's implementation of the Bus Regulatory Reform Act of 1982, as you know, the Commission strongly supported passage of the Bus Regulatory Reform Act, and many of the specific reforms we advocated were included in the bus legislation which was enacted. After the act was signed by the President on September 20, 1982, the Commission moved expeditiously to propose implementing rules.

Experience with other industries, such as trucking, that have moved from a regulated to a more competitive economic environment, convinces us that it may well be another year or two before the full impact of bus regulatory reform is realized. Nonetheless, in the year since passage, many firms have come forward to take advantage of the new operational freedom offered them by the act. My full written statement focuses on three key areas—eased entry, rate flexibility in conjunction with limitations on antitrust immunity, and a new exit policy.

In the entry area, we are pleased to report that the act has had a significant effect. Major carriers have moved to rationalize their route structures. Many smaller carriers have also utilized this opportunity to enter into or expand existing regular route operations. There has been a dramatic increase in charter services, which require very low startup or capital costs. One issue that has arisen in the entry area concerns applications by government subsidized carriers to operate charter and special services.

The industry has also taken considerable advantage of the rate freedoms contained in the Bus Act. Although fare increases have occurred on certain routes, carriers have also responded to the more competitive market created by the Bus Act by filing a number of independent rate actions and initiating some innovative discount programs.

Prior to passage of the Bus Act, many States held intrastate rates at an artificially low level, causing subsidization of regular route intrastate passengers by interstate passengers. Section 17 of the Bus Act gave the Commission authority to review intrastate rates of interstate motor common carriers of passengers. The Commission has received 23 petitions for such review. Sixteen have been granted, 2 have been dismissed, and 5 remain pending as of this date.

Since enactment of the Bus Act, Greyhound and Trailways have proposed to drop or have dropped numerous points from their route system. However, the discontinuances that have occurred are, for the most part, not an unexpected nor unintended result of the Bus Act, since one of the aims of the act was to provide carriers both greater entry and exit freedoms so they can best reorganize and rationalize their route structures.

The Bus Act provided statutory authority for the Commission to preempt State regulation of exit from regular route passenger service in certain circumstances. The Commission has received 23 petitions for intrastate exit review. One petition has been dismissed, 1 has been denied, and 13 have been granted, of which 3 were unopposed. The remaining 8 petitions are pending.

Let me touch briefly on several other areas of interest regarding the impact of the Bus Act. Analysis of bus passenger complaint data indicates that complaints to the Commission regarding service quality have dropped significantly, while complaints to the States regarding service reductions have risen. Although the bus industry did not fare well during the recent recession, the Commission is firmly convinced that as carriers take advantage of the new freedoms contained in the Bus Act, and as the economy continues to improve, bus carriers' financial results will improve as well.

The Commission's Office of Transportation Analysis is preparing a study that will focus on the market structure, conduct, and performance of the intercity bus industry and how each of these matters is affected by the Bus Act. Also, under section 26 of the bus legislation, the Commission is conducting a study with the U.S. Department of Transportation on intercity bus terminals and stations—our part of terminal study will be completed, on schedule, before the end of the year—I will let DOT speak for themselves.

While, as mentioned earlier, it may be another year or two before the effects of passage of the Bus Act are fully realized, the Commission believes that the industry is already responding positively to the operational freedoms afforded by the act and that the end result will be improved price and service options for bus passengers.

Last, but certainly not least, I would like to briefly comment on the Household Goods Transportation Act, its implementation, and its effect on the moving industry and the shipping public. The congressional goals of this act were to reduce unnecessary regulation, strengthen consumer protection, and establish maximum carrier flexibility in the pricing of service. In accordance with the act, the Commission reviewed and revised its operational regulations, effective February 1, 1982. Recently, we reopened that proceeding to receive comments on whether any of the present rules are burdensome, unnecessary, inadequate to protect shippers, or otherwise inappropriate.

The Commission has also reduced a substantial amount of required paperwork, saving the industry nearly 44,000 work hours. Last March, we instituted a monitoring program to ascertain the level of compliance with our operational regulations and to evaluate how carriers are overseeing the adequacy of their agents' service. We are also conducting a study to determine the impact of the act on shippers and carriers, including class III carriers.

As for carrier flexibility in pricing, there is a wide variety of new price and service options. These include various forms of discounts, dispute resolution programs, negotiated contracts, binding estimates guaranteed service dates, and full value liability. The number of shipper complaints lodged with the Commission continues to decline considerably.

Present trends are reflected in expanded operations by carriers, some new entry, and significant use of contracts. As for the financial condition of the industry, our most recent data show that earnings of the Nation's largest household goods carriers, for the 12 months ending June 30, 1983, showed improvement, compared to the same period of the previous year.

At present, we believe the Household Goods Act is working well, to the benefit of both shippers and carriers.

This concludes my prepared summary statement, Mr. Chairman, and we would all be happy now to respond to any questions that you or the other members of the committee might have.

I understand that perhaps my colleagues have a statement they would like to make as well at this time.

Mr. **Anderson**. Do any of the other Commissioners wish to make a statement—Ms. Gradison?

Ms. **Gradison**. I have a prepared statement to offer for the record.

Mr. **Anderson**. It will appear at this point in the record.

[The statement referred to follows:]

STATEMENT OF HEATHER J. GRADISON, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the subcommittee, I want to thank you for the opportunity to testify and answer any questions you might have concerning our implementation of the motor carrier reform legislation enacted since 1980. I concur with the Commission's testimony, which points out that the motor carrier reform legislation is working. I would like to take just a few minutes to highlight some current statistics that illustrate that point as it relates to the trucking industry.

Statistics for the second quarter of 1983, which is the most recent quarter for which complete statistics are available, show that earnings in the trucking industry are improving as the Nation's economy recovers. This development supports the proposition that the financial problems that have occurred in the motor carrier industry during the past 2 years are largely a product of the sharp business recession we have experienced rather than a product of deregulation.

During the second quarter, the operating revenues of the 100 largest common carrier trucking companies—which account for nearly half of the operating revenues generated by all class I and II motor carriers—increased 3.7 percent compared with the same period in 1982. At the same time, net income rose by 78.2 percent.

For the year ended June 30, 1983, these carriers' net income was up more than 20 percent compared with the previous year, and their operating ratio improved from 97.9 to 97.2. The rate of return on shareholders' equity increased from 6.17 percent to 7.57 percent.

Although no comparable statistics are available for the third quarter, the earnings reports issued by several major carriers indicate that the improvement in revenues and earnings is continuing.

The Ryder System reported record revenues and earnings for the third quarter and the first 9 months.

Overnite Transportation reported an increase in net earnings of 51 percent for the third quarter and 60 percent for the first 9 months.

Transcon reported net earnings of nearly $2 million for the third quarter, compared to a loss during the same quarter in 1982.

American Carriers reported a 215 percent improvement in net earnings for the third quarter.

Arkansas Best reported record net income of $3.9 million for the third quarter, compared with a net loss of $7.9 million during the same quarter in 1982.

Leaseway Transportation reported that net income was up 20 percent for the third quarter and 32 percent for the year.

Overland Express reported an improvement in net income of 80 percent for the third quarter and 117 percent for the first 9 months.

Wall Street has recognized that with the end of the recession the motor carrier industry has the potential to be very profitable. As of the end of last week, nearly all the listed trucking company stocks were selling at or near their highs for the year.

At the same time that the motor carrier industry is recovering from the recession and is prospering in a less regulated environment than it has known for almost 50 years, shippers also are benefitting. Today, shippers can choose from more than 27,000 motor carriers and can take advantage of numerous rate options. Thanks to the relaxed entry standards mandated by the Motor Carrier Act, shippers are no longer faced with a very limited selection of carriers offering service in a given traffic lane and all charging a single price. Today, the shipper can choose from many carriers offering a wide variety of service options and a wide choice of prices.

With respect to employment in the trucking industry, while it is true that a number of high-cost carriers have been unable to adjust to a less regulated environment and have closed their doors, we should also remember that a much greater number of new carriers have opened for business. While precise statistics are difficult to obtain, a recent paper presented by Dr. Alice Kidder suggests that employment losses at trucking companies that have gone out of business generally have been offset by jobs created by new trucking companies.

What all of this means to me, Mr. Chairman, is that—despite the deep business recession of the past 2 years—trucking companies, their shippers, and their employees are adjusting to life in the new, more competitive environment. While a few individual companies are having a more difficult time adjusting to this new environment than is the balance of the industry, it is clear that the motor carrier reform legislation—as we have implemented it—is working and delivering benefits to the motor carrier industry, shippers, and the American consumer.

Mr. ANDERSON. Please proceed.

Ms. GRADISON. I want to thank you for the opportunity to testify and answer questions you might have concerning our implementation of the motor carrier reform legislation enacted since 1980. I concur with the Commission's testimony, which points out that the motor carrier reform legislation is working. I would like to take just a few minutes to highlight some current statistics that illustrate that point as it relates to the trucking industry.

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Mr. **Anderson**. Thank you, Ms. Gradison.

Mr. Sterrett.

Mr. **Sterrett**. Mr. Chairman, I have a brief opening statement that is largely repetitive of what Commissioner Gradison and Chairman Taylor have said, and in the interest of time I will just submit it for the record.

Mr. **Anderson**. It will be made a matter of record at this point.

[The statement referred to follows:]

OPENING STATEMENT OF VICE CHAIRMAN STERRETT

There is no doubt that the Motor Carrier Act of 1980 brought substantial change to trucking regulation. As Congress anticipated, this change has worked to the benefit of the shipping public. However, some established carriers have experienced difficulty since the Act was passed. While it is clear that much of this resulted from the recent economic recession, there is no denying that the new competitive environment created by the Act has probably been a contributing factor to those difficulties in some cases. That is to be expected when a long-protected industry is opened up to competition.

It should be emphasized that what was once a virtually closed business is now much more open to imaginative new entrepreneurs, as well as innovative existing competitors, who are willing to make their marks without government assistance. The result is that trucking companies are now free to focus on service rather than regulation. While it has been a difficult period for some in the motor carrier industry, I strongly believe that in the long run the Act will have strengthened the industry to the advantage of shippers. Moreover, in a sense, the ultimate judgment of the Act and the Commission's implementation of it will be made by the shipping public. So far that judgment has been very favorable.

Mr. **Anderson**. Mr. Andre.

Mr. **Andre**. In the interest of time, I will forgo an opening statement.

Mr. **Anderson**. The Motor Carrier Act of 1980 made some revisions in the Commission's authority over rates and aside from the provisions dealing with released value rates and rate bureaus, the notable changes were the establishment of a zone of rate freedom, the establishment of a new rule of ratemaking and some policy guidance in the revised national transportation policy. Many segments of the motor carrier industry questioned the Commission's implementation of these provisions and believe that rate discounting and below cost rates are having a severely adverse effect on the industry and on some shippers.

I have a series of questions here and I will be directing them to you.

My first question is: Whether or not you agree with that assessment. I would like to have you comment on that.

Mr. **Taylor**. Mr. Chairman, we conducted a proceeding. I had a difficult time getting my colleagues to go along with it, but they ultimately did in Ex Parte No. 166, and the purpose of that proceeding was to explore the whole matter of discount rates and the practices that were going on and what was involved. We had no intention at the time that proceeding was undertaken to get into establishing any kind of standards or practices as such; more we had in mind the gathering of information to determine what in effect was going on, and, in particular, so far as my own personal interest was concerned, I was trying to see if we could not develop some information as to whether or not this discounting was really only available to large shippers with a lot of leverage or whether small shippers were also being given the opportunity to participate.

In any event, we did have the proceeding. We did develop some information. I am very glad that we had it. Unfortunately, one of my colleagues indicated in a separate expression that he felt it was a total waste of the Commission's time and resources. The fact of the matter is we did have it and we came up with, I think, a reasonable analysis which indicated that, at least insofar as discrimination is concerned, we would have to look at those matters on a case-by-case basis and that we would do so, and if we found that there were abuses that ought to be looked at, we would endeavor to address them. We did not develop all of the information I would have liked to have had insofar as small shippers and small shipments are concerned, but I think we did at least develop enough information to reach the conclusions that are set forth in the Ex Parte No. 166 decision.

Mr. ANDERSON. Mr. Chairman and members, has the Commission approved rate discounts in which the shipment moves COD and the consignee pays the rate, but the consignor, the shipper receives a refund or payment of any kind? And if the answer is yes, I would like each of the Commissioners who favor such discounts to tell us what benefit is accruing to the consignor, the consignee, and the ultimate consumer?

Mr. TAYLOR. We had a proceeding, Mr. Chairman, which was before the time that my three colleagues came on board, on September 8, 1981. As a matter of fact, I did not participate in it either.

The Central States Motor Freight Bureau filed and sought a declaratory order from the Commission. I believe Commissioners Clapp and Gresham handled that for one of our divisions. Division 1 specifically.

If you want an answer from me as to how I feel about that matter——

Mr. ANDERSON. Is the answer yes?

Mr. TAYLOR. I think we said yes, that we did not have a problem with it, and my response to whether or not that is an appropriate answer, if you want my own personal view is that, generally speaking, a discount should go to the party that is paying the shipping bill. You are talking about a COD shipment and the discount back to the consignor with regard to that COD shipment. It seems to me if that is specifically provided for in the tariff, there is not any problem about it. If it is not provided for in a tariff, then it is the kind of situation you would have to take a look at. I guess conceivably you could make a case that it might be an improper rebate, but to make an across-the-board judgment on the thing without having the facts of all that is involved in the particular case, then it is not fair or appropriate to make a judgment across-the-board. That is my own personal view of that particular situation.

Mr. **Anderson**. What benefit is accruing to the consignor or the consignee or the ultimate consumer? Is there any——

Mr. **Taylor**. As long as it is in the tariff and the COD consignee knows that this is going on, I do not see that there is any problem with it, and I do not see that there is any Elkins Act situation or any difficulty whatsoever. If it is not in the tariff and the consignee does not know about it, then I think you really have to take a look and see where you are with the whole thing. That is my personal view.

Mr. **Anderson**. So it results in reduced transportation costs then?

Mr. **Taylor**. That is the point. I think that argument could be made.

Now, how my colleagues feel about it, I do not know. You will have to ask them individually.

Mr. **Anderson**. Just so how it works now. You say the consignee pays the rates. But would that not be the tariff? If they pay that rate, then how do they get a refund back? That would also be in the rate?

Mr. **Taylor**. There are firms now, carriers who are giving rebates on both ends, to both consignors and consignees.

Mr. **Anderson**. Would that be in the rates?

Mr. **Taylor**. Let us call them discounts so that we do not have to use that ugly word rebate.

Mr. **Anderson**. Is it a good policy?

Mr. **Taylor**. From my point of view, it ought to be in the tariff if it is going to go to anybody other than the individual who is paying the shipping bill. That is my posture on it. It ought to be in the tariff.

And I do not think there can be a question about legality. If it is not in the tariff, then there is a problem. It seems to me we have to examine the individual circumstances and see whether or not some action is warranted.

Mr. **Anderson**. If it is not in the tariff, what is it, kind of under the table? How do they know they are going to get it or not going to get it?

Mr. **Taylor**. Mr. Chairman, there are all kinds of practices today that are not in the tariffs. All kinds of practices going on today.

I think the murmur in the room will indicate agreement with that statement.

Mr. **Anderson**. Are you doing anything to correct this?

Mr. **Taylor**. We are doing what we can with the limited resources that we have and, believe me, they are very, very limited. That is why Mr. McFarland is at the table.

Mr. **Anderson**. Ms. Gradison.

Ms. **Gradison**. We are investigating complaints as they arise. With regard to the specific issue, I was not on the Commission at the time that particular vote was taken. Again, there is a question as to whether or not a refund can be made to someone who is not actually participating in the shipment, but the choices made available to the shippers and the carriers today as a result of the Motor Carrier Act should provide enough options so that if they do not like the refund being made to the shipper, they can choose another carrier.

Mr. ANDERSON. Mr Andre.

Mr. ANDRE. Yes. I identify with those remarks and in particular the remarks of the chairman with respect to his economic analysis of the situation as well as his goal of strict construction in regard to the statute.

Mr. ANDERSON. Mr. Sterrett.

Mr. STERRETT. I would agree, if it is the tariff, we should not have a problem. We are responding to complaints as they arise. And I think we should be looking at complaints. Since it is difficult for us to police the entire area as it is today, we should be responding on a complaint basis.

Mr. ANDERSON. So then, I guess, to sum it up, you are aware of the problem, it does exist, you are trying to take some steps to correct it. Is that a reasonable——

Mr. TAYLOR. To the extent that we are made aware of it, we will take a look at it.

Mr. ANDERSON. We are certainly made aware of it and I would assume you people would be aware as we are, because we are not involved as much as you are.

Mr. TAYLOR. Our problem on a case-by-case approach is to have a specific case that somebody has complained about or made an issue of it. To simply talk about a general practice that is going on, yes, we can be aware of that. But taking a case-by-case approach, we have to have some specific circumstances in a given situation, Mr Chairman.

Mr. ANDERSON. Do any of you believe that the Motor Carrier Act changed the Commission's authority with respect to rate discrimination or predatory practices in contravention of the national transportation policy?

Mr. TAYLOR. I do not think it did. I think we have a right to suspend or investigate rates for those kinds of reasons without any question. We have not done much about suspending or investigating, but we have the right without question.

Mr. STERRETT. I would agree.

Mr. ANDERSON. Do any of you believe that the act limited the Commission's authority to suspend and investigate rates that might be discriminatory or constitute predatory practices in contravention of the national transportation policy?

Mr. TAYLOR. No.

Mr. ANDERSON. The answer is no.

Mr. Chairman, I note that the Commission has declined to issue standards for review of rate discounting practices, and it chooses to rely upon existing standards and proceeds on a case-by-case basis.

Now, what are the existing standards? How many rate discount proposals have been suspended and investigated under those standards? And how many complaint proceedings are pending where rate discounting is the issue? And how many proceedings involving the issue have been disposed of? And with what result?

Mr. TAYLOR. My answer to that question, Mr. Chairman, is of necessity going to require discussion of two or three matters. So if you would bear with me, I would like to go through them.

Mr. ANDERSON. Fine.

Mr. TAYLOR. I have mentioned Ex Parte No. 166 already, which deals with pricing practices, and I will not repeat what I have already said about that.

I think we probably did not find out—at least I did not, all that I would have liked to have known about the extent to which discounts are available for small shippers and small shipments as well as to the big guys.

We then had another proceeding. Ex Parte No. 128, which dealt with the matter of general increases. That whole proceeding was dismissed for lack of current evidence. It was quite stale and was dismissed without establishing any evaluation standards, insofar as general increase filings are concerned. I felt that that was really a shame, that at least some standards should have been provided, not minimal standards below which rates cannot go in the discounting area, but some kind of standards as to how general rate increase matters would be treated by the Commission.

The Ratemaking Study Commission felt very, very strongly about that point and made that very clear to the Commission. As a matter of fact, in my dissenting opinion to the Ex Parte No. 128 matter, I pointed out myself that section 10701(e) specifically refers to standards and procedures to be adopted by the Commission The legislative history of the 1980 act indicates that Congress specifically intended, if not mandated, the formal adoption of standards by the Commission. Representative Harsha noted from the congressional history that section 13 of the bill directs the ICC to develop formal criteria for determining the revenue needs of motor common carriers. Small, less than truckload shippers who rely heavily—I am reading again from my dissenting opinion—who rely heavily on regular route service have not enjoyed, in my view, the same variety of price and service options being offered to the large or truckload shipper. Since discounting is not as widespread for less than truckload traffic, rate proposals on small shipments tend to become the actual rates at which this traffic moves. Accordingly, since these rates are collectively established by rate bureaus, under antitrust immunity, the Commission should continue to carefully examine the reasonableness of the proposals particularly with respect to small shipments. Collective ratemaking continues to enjoy antitrust immunity, and our Commission continues to bear the sole responsibility for exercising jurisdiction over such activity to be sure that it produces reasonable rates.

Finally, in my dissenting opinion, I went on to say that the majority states that the best approach at this time is not to adopt standards but to evaluate general increase proposals on a case-by-case basis. However, not one general rate increase proposal has been suspended or investigated for over a year, and I will come back to that in a moment with some facts for you.

Considering the majority's refusal to formulate standards, and in light of their action in the general increase proceedings, one can only conclude that a majority of the Commission has totally abdicated its responsibilities to insure the reasonableness of rate setting with these activities.

Now, I did some research on the matter of suspensions and investigations with respect to general rate increases. Before Commissioners Sterrett, Andre and Gradison came on board, while I was serving with Commissioners Clapp and Gilliam in a matter filed by the Central and Southern Bureau, the general commodities general increase, which was acted upon on January 26, 1982, I voted to suspend and so did Commissioner Gilliam, so did Vice Chairman Clapp. Commissioner Gresham voted not to suspend or investigate. That is one of the three.

The second one was the decision that was reached on February 26, 1982. Again it was before Commissioners Andre and Gradison came on board. Commissioner Sterrett was on board but he did not participate. And in this matter, there was a suspension which was supported by myself, by Vice Chairman Gilliam, and by Commissioners Gresham and Clapp. But as I say, Commissioner Sterrett did not participate.

On January 26, 1983, another matter was issued. This one is kind of interesting. It involved a restructuring filing and our figures show that there was a very, very high return on equity involved, perhaps even as high as 50 percent. Originally on November 24, 1982, Chairman Taylor, Vice Chairman Gilliam, and Commissioner Simmons voted to suspend. Commissioners Andre and Gradison voted not to suspend or investigate. Commissioner Gradison issued a separate expression of opinion. Commissioner Sterrett was not there at the time and did not participate.

Subsequently, after Commissioner Gilliam had stopped voting and Commissioner Sterrett had returned, that suspension was lifted and revoked. And again I was in the minority with Commissioner Simmons. Commissioners Andre, Gradison, and Sterrett voted to lift the suspension and not only that, but on January 26, the suspension was vacated immediately and the proceeding was discontinued.

Now, those are the only three suspensions that we have had on general rate increase filings at the Commission in the years 1982 and 1983. I understand there have been one or two very small insignificant discount suspensions. I do not have the specifics on those and we would be glad to provide those for you if you would like them.

It is really that action, and I will not get into that now because I am sure that is another area you want to get into later on, but it is that lack of action, both in terms of the information that I felt should have been developed in Ex Parte No. 166 and the majority's reaction to Ex Parte No. 128, and in the failure to suspend anything that ultimately led to the NASSTRAC petition for the removal of antitrust immunity insofar as shipments under 1,000 pounds are concerned. I know you probably want to get back to that in some detail later. I am sure my colleagues will want to have something to say in this area as well.

Mr. ANDERSON. Mr. Chairman, you kind of answered the question that I asked, but you also brought other questions to mind.

I think I will ask them of the other Commissioners so that we might have a broader view.

Mr. TAYLOR. The whole thing does tie together as a piece and it is hard to talk about just one segment of it.

Mr. ANDERSON. Why is it not a good policy to issue some general standards which would give the carriers and shippers some general guidance on what rate discounting practices and rate reductions will be acceptable by the Commission? I believe the chairman has already addressed that.

Mr. TAYLOR. I think it is important, I think Congress mandated the use of general standards in increase cases; that is why I dissented as I did in ex parte No. 128, so I would agree that we should.

Mr. ANDERSON. Ms. Gradison.

Ms. GRADISON. First of all, in ex parte 128, this was designed to examine standards for revenue need for motor carriers, we found that the existing standards were adequate, and those are outlined in MC-82.

Second, with regard to suspensions and investigations, we review each one of these on an individual basis. Clearly, if the evidence is there, that it should be suspended and investigated, we would consider to do so. So far we have not found it necessary.

With regard to industry standards for individual rates, again, the cost, expenses, revenues, operating ratios are different for each carrier. The general feeling, or I should say my feeling, which there seems to be some concurrence with, is that to set a standard rate level would penalize the more efficient carriers, and perhaps penalize some of the less efficient carriers. That is why we continue to review rate matters on an individual basis.

Mr. ANDERSON. Mr. Andre.

Mr. ANDRE. As the chairman indicated, this is a very involved question, and I would like to go back very briefly to discounts and downside flexibility. It is my understanding that the predation standards and the discrimination standards remain as they were prior to the Motor Carrier Act of 1980, and, therefore, I feel that a case-by-case analysis is adequate.

But, furthermore, amidst, I believe, several hundred thousand rate filings there have been only a handful of complaints. To summarize my comments on the downside, it is my understanding that the national transportation policy is specifically to promote competition and efficiency, and to foster a proliferation of service and price options.

Now, with respect to the upside, some of this will be repetitive with respect to the remarks that have been made already. It is my understanding that the standards under section 10701 were generally in place prior to the Motor Carrier Act of 1980.

To the extent that changes were required by the Motor Carrier Act of 1980, specifically recognition of future foreseeable costs, these were adopted in MC-82.

The Commission currently handles the general rate increase requests in accordance with the substance of section 13. We have adopted MC-82 to handle the foreseeable future costs.

As far as my voting in these cases, particularly the general rate increases, I have found that the ICC staff has recommended that most of the proposed general rate increases were either cost justified or justified on the basis of low industry earnings. So I am merely following the staff recommendations in that regard.

Mr. ANDERSON. Mr. Sterrett.

Mr. STERRETT. I do not know what more I can add to that. In ex parte No. MC-166 we did enunciate our standards for discounting. We all agreed on what those were. We all agreed that it ought to be on a case-by-case basis. We also look at increases on a case-by-case basis. I have looked at each one individually, and very carefully and concluded that they were justified.

We do have the standards that are enunciated by the Congress in section 10701 and by us in ex parte No. MC-82.

Mr. ANDERSON. In your opinion, do you believe the rate policies of the Commission have had positive effects for the motor carrier industry, the shippers and the general public?

Please explain your answer, indicate in your answer whether or not you believe any segments of the trucking or shipping industry have prospered or suffered reversals disproportionately.

I would like to have each Commissioner respond, if you would like.

Mr. TAYLOR. That is a very, very difficult question to answer, Mr. Chairman, because without some kind of a study, which we have not conducted, I do not know how you could pull out some specific Commission practice or procedure, and then equate that to some general things that have happened insofar as the trucking industry is concerned.

The argument still ensues as to whether or not the trucking industry's problems are presently a result of the recession that we have just been through, and hopefully now are recovering from, or whether it is the Motor Carrier Act, or the Commission's implementation, and if that cannot be resolved. I do not think there is a way in the world that we can sit down and come up with any kind of definitive answer as to what the Commission's actions, or lack of action in the rate area has done insofar as the industry is concerned.

Now, the fact of the matter is, and Commissioner Gradison gave you some rather specific statistics on it, the condition of the motor carrier industry is substantially improving. I have some even later data that I would like to give you, which I think perhaps would be worthwhile for you to have.

Our official news release for October 3, 1983, setting forth the latest figures on the trucking industry show that a comparison of the second quarter operations for 1983 versus the same period in 1982 reflect operating revenues increased 3.7 percent to about $4 billion. The net carrier operating income rose substantially by 80.6 percent to $219.6 million. That net income also improved significantly by 78.2 percent to $121.5 million, and that revenue tons hauled did decline some 3.4 percent.

A comparison of the 12-month period ended June 30, 1983 versus the 12 month period ended June 30, 1982, shows that operating revenues remained about the same, approximately 15.6 billion as revenue tons hauled declined 5.8 percent; that net carrier operating income increased 33.7 percent to 430.8 million, and that net income increased 20.3 percent to 220.5 million.

Now, the very latest figures that have not yet been released, and I must characterize them as preliminary at this juncture, for the 100 largest common carrier trucking companies, reflect that for the third quarters of 1983 and 1982, on a comparison basis, operating revenues have increased 7.9 percent to about $4.3 billion. Net carrier operating income has risen substantially, by 95.1 percent to $214.1 million. The net income more than doubled, rising 131.4 percent, to $111.9 million, and for the 12 months ended September 30, 1983 versus the 12 months ended September 30, 1982, operating revenues have increased 2.8 percent to $15.9 billion, even though revenue tons hauled have declined to 2.5 percent, and net carrier operating income has increased 121.5 percent to $528.3 million, and net income has increased 119 percent to $278.4 million.

Now, I cannot read those figures and come to the conclusion that the trucking industry is substantially suffering as a result of what the Commission has done to implement the act. I would certainly feel that those figures support the testimony that I presented in my summary statement, that recovery for the trucking industry is paralleling the recovery of the economy in general.

Now, remember these are figures for the 100 largest carriers. We do not have figures on the little carriers. We are trying to develop some. That we do not know. And that is what we constantly hear, that there are an awful lot of smaller truckers that are in trouble. We are trying to monitor that as we develop information, and I should point out, in all fairness, that figures of those class III carriers are not included in the figures that I just presented.

Mr. ANDERSON. I am aware of that. You indicate that because you have not made a study, that you cannot tell us of any specific groups that are suffering reversals disproportionately. Among others, we have been contacted by the small shippers, by the independent operators, and they say they are suffering, and it seems to me that you should know this.

I realize you have not had a study, and that you cannot give us an answer that officially represents the views of the Commission.

Mr. TAYLOR. Two things are being done to try to address that. Again, I hate to keep passing the buck to my friend, Matthew Scocozza, who is going to follow me, but as far as small class III trucking carriers are concerned, we have undertaken to develop some information, insofar as the small household goods carriers are concerned, trying to do that on our own. However, I cannot give you any specifics from either of those pending study efforts at the moment.

I simply want to bring out the fact that in presenting what appears to be some rather glowing figures here, they are for the bigger carriers, and not for the smaller ones.

Mr. ANDERSON. Ms. Gradison?

Ms. GRADISON. As I said in my opening remarks, I think that the motor carrier industry is following the basic economy and is coming along nicely. I echo the chairman's remarks.

Mr. ANDERSON. Any other further information that any of you do have, we would like you to submit to us for the record. We will keep the record open.

Mr. TAYLOR. All right. Anything that we can develop for you, we will make available to you.

Mr. ANDERSON. Mr. Andre?

Mr. ANDRE. Yes. On the subject of economic dislocation and disruption, I think it is fair to say that for all of us at the Commission, our chief concern on the motor carrier side is exactly this: disruption.

We are all of us aware that on page 10 of the House Conference Report, the very verbiage indicating the congressional intent, states that the Congress intends that the changes in the statutes, and any resulting changes be implemented with the least amount of disruption to the transportation system as possible.

This is our primary concern, I can assure you, on the motor carrier side. But at the same time, we realize that there are some factors that are beyond our control, or beyond what we can do anything about. I think we are in unison that as the chairman indicated, the recession has been the cause of most of the recent distress. It is regrettable, but that is one factor which is not traceable to our actions.

Indeed, if the Motor Carrier Act had not permitted downside price agreements and flexible entry, the total loss of traffic might have been even greater. If price and service had remained inflexible, or had price actually increased, as may have been the case in other recent recessions, total traffic volume would probably have declined even more.

An example of this is that the private carriage declined in the face of new common carrier price flexibility. Without this, a lot of traffic might still be in the hands of the private carriers that is now in the hands of common carriage.

Congress knew that it was adopting a very different regulatory policy, and that some amount of dislocation was anticipated. Congress indicated a willingness to consider whether a tax writeoff should be given firms whose certificates could no longer support the book value indicated in their balance sheets, since the certificates no longer represented the likelihood of above market returns.

Similarly, Congress recognized that there could be some impact on labor, particularly organized labor. Section 35 of the Motor Carrier Act directs the Secretary of Labor to assist labor with potential job loss, and Congress indicated that it would give the matter further legislative consideration if the disruption appeared too serious.

Consequently, assuming that a part of the current distress is traceable to the Motor Carrier Act of 1980, the fact is that some distress was anticipated. The amount can be minimized, not by a lengthy transition period, but by a rapid move to equalize everyone's competitive opportunity now during the economic upswing.

The motor carrier system should be encouraged by the Government to get on with its rationalization now during recovery. Slowing down at this point would be poor timing.

Mr. ANDERSON. Mr. Sterrett?

Mr. STERRETT. Mr. Chairman, I essentially agree. I think the industry is coming back as strongly as the economy is. There is, I am sure, some disruption in some sectors of the industry. However, I think that is part and parcel of becoming a more efficient industry.

Mr. ANDERSON. The ones that we hear from are the small independent operators, and the small shippers.

Mr. STERRETT. Small shippers?

Mr. ANDERSON. Small shippers, and the independent operators.

Mr. STERRETT. Most of our information on the small shippers has been positive.

Mr. ANDERSON. Would each of you respond to this question? This will be my last one.

Do you believe that rates should be regulated in any manner at all by the ICC? Please explain your answer.

Mr. **Taylor**. Well, I think we have an obligation, Mr. Chairman, under the statute to do something about rates. I think that is what Congress intended, and my approach to this whole proposition has been that we do not do what we would like to do, or I think perhaps ought to be done, but what Congress told us to do.

When you change the rules, and alter the ballgame for us, then presumably, as implementers of your intent and your will, that can come with it. But as the statute stands now, I think we have a responsibility to see what is going on in the rate area.

I think we have pretty well decided that we are going to try and approach rate matters on a case-by-case basis. I think that is the message that we tried to deliver in ex parte No. 166, and I think that as specific problems are presented to us for concern, for our consideration, that we are obliged to address them. But I think that is what Congress expects us to do.

If you want us to do otherwise, I am sure that you will tell us in due course.

Mr. **Anderson**. Ms. Gradison.

Ms. **Gradison**. Mr. Chairman, with all respect, I do not think belief is a factor in this. It is a matter of law and to the extent that the statute requires us to regulate the prices, we should do so.

With respect to collective rate actions, I think that they should be subject to closer scrutiny than independent actions, and that is exactly what we attempt to do.

Mr. **Anderson**. Mr. Andre.

Mr. **Andre**. I believe that so long as Congress mandates continued motor carrier regulation, some rate regulation will continue.

We already have some experience with flexible pricing in a difficult recession, and we are now getting a look at how the industry responds to a growing economy. The evidence indicates that competition has been working satisfactorily. Industry was unhappy with new entry under the Motor Carrier Act coming on top of declining traffic due to the recession. But the experience seems to indicate that workable prices were achieved. The traffic, such as it was, continued to be carried, and while the industry was hard hit by the recession, the pain was not out of line with what would have been predicted based on earlier recessions.

Flexible pricing may have even helped a little. There has been a decline in the use of private carriage, and I think that may be attributable to better pricing.

As far as regulation and standards are concerned, the ICC has very much the same standards in place today that it had before the Motor Carrier Act of 1980. With the addition of a standard reflecting, as I mentioned earlier, the new provision on foreseeable future costs, the staff uses an elaborate set of formulae to consider collective rate increases. Discrimination and predation are still judged by traditional rules.

New, additional standards do not seem to be called for. Logically speaking, it would be odd for the Commission to greet the freedoms created under the Motor Carrier Act by adopting more standards. Fewer standards would seem to make sense.

Mr. **Anderson**. Mr. Sterrett.

Mr. **Sterrett**. Mr. Chairman, the short answer to your question, whether or not rates ought to be regulated, is that it is a decision for Congress. Congress has decided that they will regulate, and we are attempting to do so.

Mr. **Anderson**. Mr. Shuster.

Mr. **Shuster**. Thank you very much.

We appreciate your testimony, and have been looking forward to your appearance for a long time.

We seem to have a slight difference of opinion, because as I understand your testimony, your testimony is that the act is working well, and that the ICC is doing its job. And we have had a parade of witnesses before this subcommittee, which have charged—who have charged the ICC is not enforcing the act, that the ICC is not interpreting the act as it was meant to be interpreted by the Congress. And that the trucking industry, or at least segments of the trucking industry, are in a shambles as a result of the ICC not interpreting and not enforcing the act, as was intended by the Congress.

It is that difference of opinion between your testimony today and the testimony of many witnesses we have had before this committee which is of great concern to me. Perhaps it is symbolized in Mr. Andre's response to one of the questions which was asked by our distinguished chairman.

If I understood you correctly, Mr. Andre, you said that our national transportation policy requires for increased competition—in fact, I think you used the word for proliferation of competition. I do not mean to put words in your mouth, but that is my recollection of what you said.

Mr. **Andre**. Proliferation of price and service options.

Mr. **Shuster**. Yes. My great concern is that while our national transportation policy, as described in section 10101, does indeed call for the promotion of more competition, it also calls for many other things, such as recognizing and preserving inherent advantage of various modes, promoting safety, adequate and economical and efficient transportation, encouraging sound economic conditions in transportation, including sound economic conditions among carriers, encouraging the establishment and the maintenance of reasonable rates for transportation without unreasonable discrimination, or unfair or destructive competitive practices, and I could go on and on.

But my point is that our national transportation policy, as stated by the Congress in the law, calls for many different things. And in fact, in many respects, these are competing concepts that need to be balanced, and the testimony we have had before this committee is that the ICC has been hellbent on deregulation, on proliferating competition, at any cost, and has disregarded these other national transportation goals.

Would any of you care to respond to that?

Mr. **Taylor**. Congressman, there is no simple answer to that, either. I have tried, as long as I have been on the Commission, to follow the law as I saw it written, and I believe I took an oath cf office when I came to the Commission, to do that, and I feel very strongly about following the law.

When I feel that my colleagues have come up with a decision, or taken an action that does not comport with what the law says, I have spoken out and said so, in a number of very strong and carefully worded, thoughtfully conceived dissents. I do not know whether you want to go through a laundry list of those.

We would be here all day if we talked about each and every one of them in detail. There are at least three or four which perhaps you would like to hear about. If you would, I would be glad to discuss them.

Mr. SHUSTER. I really think I am familiar with them, but if you would like to put something in the record, feel free to do so.

Mr. TAYLOR. Well, it is important not to broadbrush this issue, because I have sat here, I always stay when the other people testify at these hearings, and I listen to what the Teamsters have to say, and what the ATA has to say, and what the owner operators have to say, and I make a point of doing that in both the House and the Senate, and I have heard a lot of these broadbrush accusations, too, but if you really want to get into the specifics of individual decisions, where some have said that in fact the Commission has not followed a specific provision of law, or the intent of Congress, you have to in effect look at specific cases.

Now, let me just give you a couple of examples, and then I will pause, and if you want to hear a couple of more, well, we will go on with this, to whatever extent you would like to.

There has been a lot of discussion that we did not pursue the fifth circuit decision as we should have. That we did not implement it soon enough. I have a calendar for you of the events that took place at the Commission, insofar as our implementation of the fifth circuit directives are concerned.

It shows no objection on the part of the Commission to delay the implementation of the fifth circuit standards, and I think this will give you specific dates and times as we move through.

My concern with the *Fifth Circuit* decision is the fact that the real thrust of the decision was that we ought to take a look at "fit, willing, and able."

Now, the act does not make any distinction between applicants for special commodities authority, and applicants for general commodities authority, but my colleagues decided that because the case only concerned general commodities authority, there was nothing wrong with going back and doing all of the things that frustrated the fifth circuit into action insofar as special commodities are concerned.

At this point, I would like to make specific reference to a case. The case is CDB Inc. extension of Texas, it is No. MC-143776, (Sub-No. 34). The applicant originally sought authority to transport food and related products, chemicals and petroleum products, between points in Texas and points in the United States.

Upon protest, the applicant replied that it does not now operate bulk equipment, that it has no intention of providing bulk service in the future. The review board granted the authority without the bulk restriction. The division 2 affirmed on the ground that it is against Commission policy, note the words, against Commission policy, to impose a bulk restriction on specified commodities authorizations.

When the case got to the fifth circuit, we took it back on remand. On remand, a majority of the Commission held, again as a matter of Commission policy, that bulk restrictions would not be imposed on grants of specified commodities. The Commission gave the applicant 30 days to state in writing that it would be willing to accept the authority without a bulk restriction, or that the entire application would be denied.

Having been specific in saying I do not want it, do not give it to me, I ain't going to use it, they somehow had to get over the "fit, willing, and able" provision of the statute. So what was the device used? If you take the certificate that reflects your fitness and your willingness and your ability, and if you do not want to take the certificate, and you do not want to comply, so that we can construe that fitness, then you do not get the certificate at all.

I do not think that is anything more or less than administrative blackmail, at least as far as I am concerned.

Commissioners Sterrett and Andre voted for the decision. Commissioner Gradison concurred. I dissented, along with former Commissioner Simmons. My dissent specifically pointed out that 19911(b)(1)(a) does not distinguish between general and specific commodities. In either situation, an applicant must be fit, willing and able, which this applicant had repeatedly stated he was not, and never intended to be.

In response to that condition, the applicant filed a pleading, requesting that the condition be removed, in this case, he actually wanted the condition to have a limitation. The majority grant of the application relied on a statement by the applicant that it accepted the certificate now in operation.

Finally, I think he wanted to get into business. The point is, the applicant pointed out that it repeatedly stated to the Commission, in the fifth circuit, that it was not able, and had no intention of providing bulk service. He got it anyway. If that is not flying in the face of the law, I do not know what is.

Now, let me go to another one.

Mr. SHUSTER. Before you move to another one, would Ms. Gradison like to respond on that case?

Ms. GRADISON. First of all, I would like to say it is awfully nice to have an opportunity to respond to the accusations that have been made against this Commission.

Second, I will respond specifically to the CDB Corp. case, and try to sketch out a picture for you that has not always been on the record.

When I first came to the Commission, my policy was to give the carrier what they asked for, no more, and no less. Let us not tell them what they want. And then I noticed that there was some restrictions being requested in these applications.

Mr. SHUSTER. If I may interject. Give the carrier what they asked for. What about the question of whether they were fit?

Ms. GRADISON. Well, I first consider the questions of are they fit, willing and able. Once those questions have been answered, I consider what are they asking for, no more, no less.

Mr. SHUSTER. How many times in the past year has the Commission found that a carrier was not fit, willing and able?

Ms. GRADISON. I cannot answer that. I can put it in the record.

Mr. SHUSTER. Ever? Has the Commission ever found that the carrier was not fit, willing and able, in the past year? How many times?

Mr. TAYLOR. I think Director McFarland could address that. He has some information on fitness proceedings.

Mr. MCFARLAND. In fiscal year 1983, the question of fitness arose on a total of nine applications, and out of those, three—excuse me, two were dismissed, two were granted certificates—I am adding two sets of figures here together while I am talking—in two, the allegations and the petitions were withdrawn. I mean the authority was eventually granted, one was granted outright, and there are now two pending.

I believe that totals up——

Mr. SHUSTER. So if I understand what you said, none were rejected as a result of being unfit. Two are still pending, of the nine?

Mr. MCFARLAND. That is true, but——

Mr. SHUSTER. How many applications has the Commission received during that fiscal year, roughly?

Mr. MCFARLAND. Probably close to 20,000.

Mr. SHUSTER. So out of 20,000 applications, you identified 9 that possibly may not be fit, and of the 9, in no case did you find 1 that was unfit, and 7 of the 9 you found varying degrees of fitness, and you have two pending.

So it is fair to say that of the 20,000 applications, nobody was found to be unfit. Is that not extraordinary?

Mr. MCFARLAND. Well, the ones that were dismissed were likely dismissed at—were dismissed, excuse me, at the request of the applicant.

Mr. SHUSTER. And that was two.

Mr. MCFARLAND. Two.

Mr. SHUSTER. Out of 20,000.

Mr. MCFARLAND. The prior year there were 23 interventions.

Mr. SHUSTER. I think that answers my question. I did not mean to digress, but we got into it. And thank you very much.

Mr. TAYLOR. I do not want to digress either, Congressman Shuster, but if we can, I want to come back to fitness.

Mr. SHUSTER. Fine. I would like to give Ms. Gradison her opportunity.

Ms. GRADISON. The point that I am trying to make is that in many of the applications, the applicants intend to amend out their opposition, and by the time the Commission gets the request, they have specifically stated that they do not want something that would be protested in their application.

And it took a while for me to figure out what the problem was, but in each individual application you have to review it, and try to determine if this traffic is being protected, because the applicant has asked for authority that his competition does not want him to have. And if that is the case, I do not think that the Commission should be subject to that type of blackmail, in reducing the certificate which we award to the applicant.

Our Chairman has not perhaps discovered this scam, but it is very obvious and very clear, and we have to respond to it, and that is what we are attempting to do.

Mr. SHUSTER. Thank you.

Mr. Chairman?

Mr. TAYLOR. Do any of my colleagues want to comment on that, or should we go on?

Let us talk about TA's and ETA's. There is a provision in the statute, and I think it is quite specific.

Mr. SHUSTER. While you are looking for that, I just had brought to my attention a request, a certificate requested, and finally issued to one James Wilkett, MC-121794, a convicted drug dealer, sentenced to a Federal penitentiary, but he was found to be fit by the Commission.

Mr. TAYLOR. I was going to mention that. I think that is a very important case for us to discuss, and there is also a very important safety fitness case that we should discuss because of all the recent publicity in the Washington Times, I was sure it was going to come up.

So let me specifically go through that one, because I think that is an absolutely outrageous matter. I have a chronology of events as to exactly how that proceeded, and I think to set the record straight, perhaps we better go through it, because Commissioner Andre and I are the only two who have been consistent throughout in that proceeding, as to where we stand.

Commissioner Andre has consistently felt that the particular applicant should receive the authority that he got. Both Commissioners Gradison and Sterrett have changed positions on the issue.

On February 2, 1981, because this case goes back a long time, Mr. James Wilkett was convicted of conspiracy to distribute dilaudid and he was sentenced to 15 years in a Federal Penitentiary.

On February 12, 1981, Mr. Wilkett filed the application in this particular proceeding. On September 29, 1981, an administrative law judge found the applicant unfit, and the application was denied.

On November 25, 1981, Mr. James Wilkett was convicted of second-degree murder. He was sentenced to another 15 years, to be served consecutively with his first sentence.

On December 8, 1981, Division 1, Clapp, Gresham—Taylor not participating, as I only participate in the event of ties—the ALJ was reversed, and the application was granted, finding no connection between the applicant's misdeeds and its trucking operations.

On March 11, 1992, the Commission, Taylor, Gilliam, Clapp, and Gresham, deciding, Sterrett not participating, reversed the Division, and again denied the application, after having been alerted by OCCA, Director McFarland's department, of the above murder conviction that I just spoke of.

On August 13, 1982, the Commission, consisting of Gilliam, Andre, Simmons, Gresham, Sterrett—I was absent, and did not participate—approved a General Counsel's recommendation to reopen and request a remand from the court. The General Counsel said that the March 11, 1982 decision would not withstand judicial scrutiny.

On December 14, 1982, the Commission, consisting of Simmons, Gilliam, Taylor, Sterrett, Gradison—and she changed her vote after Commissioner Sterrett voted to find him unfit—rejected a staff recommendation to find the applicant fit. That is what the staff had suggested, with a 2-year term.

Mr. SHUSTER. Would you repeat that? The staff at the ICC recommended that a convicted murderer be found fit?

Mr. TAYLOR. If you can believe it at that point.

Mr. SHUSTER. The staff at ICC? Public servants?

Mr. TAYLOR. They, at that point in time, suggested that the applicant be given a 2-year term. Commissioner Andre voted to find the applicant fit.

On January 25, 1983, we are getting more current—the Commission, comprised of Taylor, Simmons, Sterrett, Gradison, and Andre—and Andre dissenting, Gilliam not participating, again found the applicant unfit, and denied the application.

On June 24, 1983, the Court of Appeals for the District of Columbia Circuit, comprised of Edwards, McGowan and MacKinnon, reversed and ordered the Commission to find the applicant fit, and to issue him a certificate.

At this point, on August 3, 1983, the Commission split. Commissioner Gradison voted with me. At this point in time Commissioner Sterrett changed his position, having voted to find him unfit, he voted not to appeal that decision.

Mr. SHUSTER. We have a vote, and we will be back.

Mr. ANDERSON. We will be right back. We will stand in recess, and be back in about 15 minutes, and pick up right where we left off.

[Short recess.].

Mr. ANDERSON. The meeting of the subcommittee will come to order. Lets proceed from where we left off.

Mr. SHUSTER. Mr. Chairman, I would like to ask unanimous consent, if the Chairman would agree, that the various instances, the examples that he has given us be furnished as a part of the record. Is that acceptable?

Mr. TAYLOR. I have no problem with that.

[The following was received for the record:]

Decisions in C.D.B. Case

No MC-143776 (Sub No 34)

C.D.B. INCORPORATED, EXTENSION—TEXAS
(Grand Rapids, MI)

Decided February 25, 1983

This decision, on voluntary remand from the United States Court of Appeals for the Fifth Circuit, (1) finds that bulk restrictions in grants of specific commodity authority are inconsistent with the useful public purpose test as shaped by the Motor Carrier Act of 1980, and (2) establishes the Commission's policy of not imposing bulk restrictions in specific commodity authorizations.

Karl L. Gotting for applicant.
Hugh T. Matthews and *Maxwell A. Howell* for protestants.

Decision

By the Commission

Applicant originally sought a certificate to transport (1) food and related products, and (2) chemical and petroleum products between points in Texas, on the one hand, and, on the other, points in the United States. Twelve shippers supported the application. The application was opposed by two protestants. Steere Tank Lines challenged applicant's fitness and ability to transport chemical and petroleum products in bulk. Applicant replied, stating that it "does not presently operate bulk-type equipment, has not operated such equipment in the past and does not anticipate in the future securing such equipment and providing service for the transportation of commodities in bulk."[1] Applicant further indicated that it had no objection to the exclusion of commodities in bulk from the authority sought, and accordingly requested that the authority exclude the transportation of bulk commodities.[2]

Review Board Number 2 granted the authority as originally sought, and noted that while applicant had no objection to restrictions which would satisfy protestants, "[i]t is contrary to current Commission policy to make the proposed exclusions [bulk and explosives] other than from grants of general commodities authority or in certain situations in which an applicant specifically requests exclusions." Steere Tank Lines filed an appeal to the review board's decision, claiming that applicant was unfit and unwilling to perform bulk service.

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[1] Applicant's reply statement is somewhat contradictory of the statement by Mr. Dale L. Sorensen, vice president, which accompanied the OP-1 application dated October 19, 1981. There C.D.B. asserted that it "is in a financial condition and is prepared to secure additional operating equipment of the same or different nature if necessary, in order to provide service to the shipping public." [Emphasis supplied.]

[2] Applicant also replied to a protest by Tri-State Motor Transit suggesting that the authority be restricted against the transportation of explosives and radioactive materials. Tri-State did not appeal the review board's decision.

Steere maintained that the Commission was attempting to force authority on the applicant contrary to the decision in *American Trucking Associations, Inc. v. ICC*, 659 F. 2d 452 (5th Cir. 1981). In response, applicant reiterated that it had no objection to an exclusion of bulk service from its authority and again requested a restriction prohibiting the transportation of commodities in bulk. Division 2, Acting as an Appellate Division, in a decision served April 26, 1982, declined to insert such a restriction on the grounds that "it is contrary to Commission policy to exclude bulk commodities from specified commodity authorizations." It further concluded that such an action was not required by the decision in *American Trucking Associations, Inc., supra.*[3] A certificate was issued June 3, 1982.

On or about May 5, 1982, Steere Tank Lines filed a petition for review of the Commission's decision in the United States Court of Appeals for the Fifth Circuit, docketed *Steere Tank Lines, Inc.* v. *Interstate Commerce Commission and the United States of America*, No. 82-4175.[4] In a decision served July 26, 1982, the Commission voted to reopen the proceeding on the present record to provide a better explanation of its decision, subject to approval of the court. On September 16, 1982, the court granted the Commission's motion for voluntary remand.

RECONSIDERATION ON THE PRESENT RECORD

We find the statement of facts as described by the review board to be correct in all material aspects, and we will amplify on the facts only to the extent necessary for clarity of discussion.

Applicant presently holds extensive authority to provide transportation in 48 States. Included within its common carrier certificates and contract carrier permits are several authorities which authorize the transportation of general commodities, including commodities in bulk. It presently serves about 30 shippers, a majority of which have substantial transportation needs to Texas and other Southwestern States. Four shippers originate traffic in Texas. This has created an imbalance in applicant's traffic patterns which it seeks to eliminate by this request for operating authority. C.D.B. anticipates that continued growth in its shippers' operations, as well as in the Southeastern States generally, will produce additional volumes of traffic. In its original statement, applicant also indicates a desire to make its operations more responsive to public needs and asserts that a grant of authority will enable it more fully to accommodate its present shippers' transportation requirements.

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[3] The division did modify the review board's decision, however, to exclude Alaska and Hawaii from the grant of authority.

[4] On May 27, 1982, the court granted petitioner's motion to consolidate this proceeding with No. MC-140829 (Sub-No. 372), *Carey, Inc.—Extension—General Commodities Nationwide*, on appeal in No. 82-4053, *Steere Tank Lines, Inc. and Niagara Tank Lines v. Interstate Commerce Commission and the United States.*

Eight firms require the transportation of food and related products from their facilities in Texas to points throughout the United States. The commodities shipped include corn and soybean cooking oil, flour, beef, fruit juices, and various prepared foods. Four other firms ship a wide variety of chemical products, including cleaners, polishes, oils, paints, adhesives, and insecticides.

Steere holds radial authority to transport commodities in bulk between nine Southwestern States, including Texas, and points in the United States. It argues that applicant has no past experience in the handling and transportation of bulk commodities, has no bulk equipment, and has failed to demonstrate fitness, willingness, and ability to transport commodities in bulk.[5] Protestant asks that the commodity authorizations be restricted against the transportation of commodities in bulk. Its verified protest contains no information pertaining to revenue loss, diversion of traffic, or other factors which might tend to show that an unrestricted grant of this application would be inconsistent with the public convenience and necessity.

Based on the evidence presented by applicant and the 12 supporting firms, we conclude that there is a present and future public need for the service as authorized by the review board.

Once an applicant has established a prima facie case of need for its proposed service, it is presumed that the proposed transportation is in the public interest. The burden then shifts to those who oppose the application to show how that service would be inconsistent with the present and future public convenience and necessity.[6] The Commission is required to grant operating authority, unless protesting carriers satisfy this burden of proof.

A protesting carrier must establish that the new service will result in harm to the public which outweighs any public benefit to be derived from the proposed operations. It is not sufficient that a protesting carrier show adverse effect upon its own operations. Furthermore, harm to the protesting carrier does not become a consideration unless there is a corresponding harm to the public. *Watkins Motor Lines, Inc.* v. *Interstate Commerce Commission*, 641 F. 2d 1183, 1191 (5th Cir. 1981); and *May Trucking Co, Inc.* v. *United States*, 593 F. 2d 1349 (D.C. Cir. 1979).

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[5] We note that there is no requirement that an applicant must own equipment needed for its operations; but rather, it must merely have the ability to acquire it and furnish it as its customers require. See *Steere Tank Lines* v. *ICC*, 675 F. 2d 103 (5th Cir. 1982), wherein the court affirmed the Commission's position that a present lack of equipment to meet all potential demands within the involved territory is not, in and of itself, a sufficient reason to deny operating authority.

[6] H.R. Rept. 1069, 96th Cong., 2d sess. 15 (1980), and S. Rept. 641, 96th Cong., 2d sess. 5 (1980).

Steere has not made the requisite showing of harm.[7] It has not established the real likelihood of substantial traffic diversion and revenue loss or that a grant of the application would result in a negative impact on its operations that would harm the shipping public. Thus, Steere has failed to rebut applicant's prima facie case.

THE BULK RESTRICTION ISSUE

Applicant and protestant maintain that because applicant, after filing its application, expressed a willingness to accept a bulk restriction, and because protestant does not want the applicant to have bulk authority, we should restrict this grant against bulk transportation.

Even prior to the Motor Carrier Act of 1980 (MCA), the Commission was never required to accept any operating restrictions on authorizations of specific commodities. See *Removal of Truckload Lot Restrictions*, 106 M.C.C. 455 (1968) and cases cited therein. In *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1 (1967), the Commission found numerous motor carrier operating restrictions to be contrary to the public interest when imposed on specific commodity or territorial grants of authority. Moreover, under the more liberalized MCA, operating restrictions are disfavored, as indicated by section 10922(f)(3)(A) of the revised Interstate Commerce Act (act) (49 U.S.C. 10922(f)(3)(A)) which states in part:

> The Commission may not prescribe a condition preventing a motor common carrier * * * from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand.

The claim that the Commission cannot force unwanted authority on an applicant overlooks other language in section 10922(f)(3) of the act which expressly provides that "[t]he Commission may prescribe conditions when the certificate is issued and at any time thereafter."

Under this section, formerly section 208(a) of the act, the Supreme Court concluded long ago that the Commission "had power to include in the authorization [for operating authority,] provision for service greater than the carrier had asked." *Chicago, St. P., M. & O. Ry. Co.* v. *U.S.*, 322 U.S. 1, 4 (1944). Other courts that have had occasion to address this matter have uniformly arrived at the same conclusion. Even before the Supreme Court issued its decision in *Chicago, St. P., supra,* a statutory three-judge district court in *McCracken* v. *United States*, 47 F. Supp. 444, 447 (D.C., D. Oregon 1942) determined that under this section of the act "the Commission could add such terms or conditions [requiring a motor carrier to perform greater service than proposed] even if he were unwilling."[8]

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[7] We have also reviewed the protest of Tri-State Motor Transit Co., not a party in this proceeding on remand. We conclude that Tri-State, which holds nationwide authority to transport explosives and radioactive materials, failed to show injury to its operations constituting public harm.

For the reasons set forth below, we have concluded that bulk restrictions in grants of specific commodity authority are inconsistent with the useful public purpose test as shaped by the MCA.

Our determination of what is in the public interest is, of course, guided by the national transportation policy, 49 U.S.C. 10101(a), as amended by the MCA, which mandates that we actively promote efficient and economical transportation. It is our judgment that to potentially hamstring any carrier obtaining new specific commodity authority by imposing a restriction against the bulk transportation of those specific commodities would be contrary to the public interest. Such a restriction would inhibit the carrier's development of efficient and economical interstate motor carrier transportation. Moreover, we are convinced that bulk restrictions violate the spirit of section 6 (restriction removal) of the MCA which requires the Commission to authorize broader, less restricted grants of authority than normally were granted prior to the MCA.

Recently, in No. MC-158495, *OHM Trucking Company, Common Carrier Application* (not printed), served June 29, 1982, the Commission recognized that less-restrictive grants allow carriers (1) to meet the changing transportation needs of shippers, receivers, and consumers, (2) to take advantage of technological modifications within the industry, and (3) to adjust to changing industrial patterns. In that decision it was noted that carriers with broad authority to handle bulk loads will be able to offer shippers of various classes of commodities a complete transportation service viz-a-viz those specific commodities. Additionally, it was indicated that to require carriers to go through the Commission's application process every time they want specific authorization to transport, in bulk, the commodities they are authorized to move, except in bulk, constitutes an undue regulatory burden.

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[8] The agency's power to attach such conditions and terms to the acceptance of authority by motor carrier applicants emanates from the Commission's most basic power to use its expert judgment to fashion grants of authority it believes to be consistent with the public convenience and necessity. This was emphasized in *A.B.&C. Motor Transportation Co.* v. *United States*, 151 F. Supp. 367, 371 (D. Mass. 1956) wherein the court noted that "the scope of the certificate which should be granted entails not only a weighing of evidence by the Commission but also the exercise of it of an expert judgment on the intricacies of the transportation involved." Also see *Boulevard Transit Lines* v. *United States*, 77 F. Supp. 594, 595 (D. N.J. 1948); and *Reading Transp. Co., Extension— Ashland, PA*, 47 M.C.C. 225, 227 (1947).

The analysis in *OHM*, *supra*, applies substantially to all grants of specific commodities and groupings. After over 2 years of experience under the MCA we conclude that bulk restrictions are not in the public interest and such restrictions will not be inserted in any specific commodity grant.[9]

Applicant's willingness to accept the bulk restriction proposed by Steere does not convince us to deviate from our position. In substance, it is a stipulation of agreement between an applicant and protestant as to the scope of operating rights to be issued. Such agreements are not, and never have been, binding on the Commission. *Ward Trucking Corp.* v. *United States*, 574 F. 2d 168 (3d Cir. 1977) received on other grounds; and *Frozen Food Express, Inc.* v. *United States*, 328 F. Supp. 666 (N. D. Tex., 1971). A certificate may be issued only if it is consistent with the useful public purpose test of the MCA. Only the Commission is empowered to make this determination and to tailor grants of authority consistent with a useful public purpose. Irrespective of agreements between parties, the Commission represents a third party whose interests are paramount to those of any individual party—the public. See *Mobil Oil Corp.* v. *Federal Power Commission*, 417 U.S. 283, 312-14 (1974); and *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940). Thus, as the court in *Ward Trucking Corp.* v. *United States*, *supra*, observed at 170:

> [T]he Commission is not bound by restrictions which have been stipulated by the parties where such restrictions fail to achieve results consistent with the public interest and inimical to practicable and effective regulation.

It is our judgment that the public interest is compromised in specific commodity grants by imposition of an operating restriction that divides the motor carrier transportation market along the lines of the method of carriage to be performed, i.e., bulk or nonbulk.[10] Market divisions of this kind are anticompetitive and undermine MCA goals of enhanced competition and transportation efficiency. *Whiteford Truck Lines, Inc. Nationwide Points*, No. MC-136635 (Sub-No. 69), (not printed) (October 29, 1982). Bulk movements of commodities are frequently the most economical and efficient means of transportation, but a carrier with a bulk restriction on its operating authority cannot offer its shippers and consignees this more efficient or economical service option. The carrier's authority would preclude this service. Further, the carrier would have no incentive to develop innovative methods for transporting in bulk those commodities of its shippers and consignees that normally move in packages and containers.

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[9] In cases involving grants of general commodities, the Fifth Circuit has ruled in *American Trucking Associations, Inc.*, v. *ICC.*, 659 F. 2d 452 (5th Cir. 1981), that bulk restrictions normally should be imposed, absent a specific showing of fitness, willingness, and ability to perform a bulk service. We are presently seeking Supreme Court review of that determination. *Interstate Commerce Commission* v. *American Trucking Associations*, Pet. For Cert. No. 82-86 (filed July 21, 1982). But, as discussed in *OMH*, *supra*, that decision is inapplicable to grants of specific commodities, and no separate fitness and ability showing is required for specific commodity authorizations in order to allow flexibility in moving authorized commodities in bulk.

[10] The Commission has traditionally defined bulk commodities as fungible, flowable commodities, dry or liquid, which can be pumped, poured, dumped, scooped, or shoveled into a vessel or vehicle with (footnote continued on next page)

Shippers and consignees should have available the services of carriers capable of meeting their complete transportation needs. Having two carriers handling the same commodities—with one carrier handling only the bulk transportation and the other only the containerized transportation—unjustifiably precludes competition and the benefits of more complete, economical and efficient service.

Our conclusion is further supported by the fact that the traditional distinction between the services provided by "in bulk" and nonbulk or general freight carriers has changed substantially in recent years due to new technological developments within the industry. For example, with the advent of collapsible or stackable rubber containers (C & S containers) 20 years ago, carriers were afforded greater flexibility in the overall services which they could provide to their shipping public. This new industry development was first addressed in *The Western Express Company Extension—Sealdtanks*, 84 M.C.C. 585, 600 (1961), affirmed *sub nom., Roadway Express, Inc. v. United States*, 213 F. Supp. 868 (D. Del. 1963), affirmed *per curiam*, 375 U.S. 12 (1963), where the Commission noted that "the use of C & S containers tends to blur the heretofore relatively clear distinction between the field of service of the general freight carrier and the carrier of bulk commodities, whether liquid or dry." In that decision, the Commission determined that general commodity carriers with exceptions in their authority directed against both the transportation of commodities in bulk and specialized equipment "should not be precluded from transporting flowable, fungible commodities when tendered in unmounted C & S containers." *Western Express, supra*, at p. 601. The Commission concluded that the aggregate

(Footnote note 10 continued)

out regard to order. Commodities in bulk are generally found in a homogeneous, loose mass and are of such small size that they cannot be handled piece by piece. Although the container for such commodities is usually formed by the walls of the transporting vehicle, commodities placed in or emptied from collapsible or stackable containers which are already on the transporting vehicle at the time of loading or unloading are also defined as bulk commodities.

of the trailer and container constituted the practical equivalent of a tank or hopper vehicle service and stated that authority to move commodities in bulk had to be obtained to provide service in premounted collapsible containers.

Subsequently, the Commission again addressed the issue of whether "in bulk" service could be provided by means of C & S containers in *CF Tank Lines, Inc.*, v. *Zirbel Transport, Inc.*, 132 M.C.C. 23 (1980), affirmed 132 M.C.C. 304 (1980). In *CF Tank Lines, supra*, the Commission determined that collapsible and container service was a hybrid of bulk and container service, and it authorized carriers which held either type of authority to transport commodities in collapsible or stackable containers irrespective of whether or not they were premounted. The Commission noted that the *Western Express* decision precluded many carriers from using collapsible containers in an efficient manner. It pointed out that the most efficient way to use these containers is to load and unload them while resting in the bed of the trailer and the Commission found that the alternative methods of loading by using lifting equipment was time consuming, costly and served no operational or transportation purpose. Accordingly, the Commission concluded that the prohibition established in *Western Express, supra*, against the transportation of premounted collapsible containers by a carrier holding no authority to transport the commodity either in bulk or through the use of specialized equipment contravened its duty under the national transportation policy to promote improved shipping methods. Thus, the *CF Tank Lines* decision has enabled general freight carriers to provide "in bulk" service using premounted C & S containers on ordinary nonbulk vehicles.

Accordingly, although we may have imposed bulk restrictions in some specific commodity grants in the 2 years that the MCA has been in effect, we have reassessed the advisability of imposing such restrictions in light of the continually evolving scheme of regulation under this new law and now modify our policy, for the above reasons, to bar completely such restrictions.

On the basis of the record here, and supported by our conclusions as to the nature of bulk service today, we find that applicant has shown generally that it is fit and able to meet the present and future needs of its shipping public.

Accordingly, this application is authorized without a bulk restriction. Applicant, C.D.B., has 30 days from the service date of this decision to either accept or reject the authorization in total. Its acceptance, however, is expressly subject to and conditioned upon its willingness to accept the authority without a bulk restriction.

We find on reconsideration:

Performance by applicant of the service described in the certificate issued June 3, 1982, will serve a useful public purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform such service and to conform to statutory and adminstrative requirements. This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Our grant of authority is subject to the following condition:

> The instant application is authorized without a bulk restriction. Applicant, C.D.B., has 30 days from the service date of this decision to inform the Commission, in writing, whether it accepts or rejects the authorization in total. Its acceptance, however, is expressly subject to and conditioned upon its willingness to accept the authority without a bulk restriction.

CHAIRMAN TAYLOR, joined by COMMISSIONER SIMMONS dissenting:

I strongly object to the seemingly paternalistic posture of the majority which, under the guise of its "expert judgment," has declared that it knows more about a carrier's business than the carrier itself.

In all the rhetoric that has passed for legal argument in this and other similarly situated proceedings, the bottom line remains. The Motor Carrier Act of 1980, 49 U.S.C. 10922(b)(1)(A), requires that an applicant be fit, willing, and able to perform the service authorized by its certificate. This applicant has stated repeatedly, both before the Commission and the court, that it has no bulk equipment, does not intend to obtain any, and is unwilling to perform bulk service. Applicant has also stated that it wants a bulk exception and only applied for authority without one because it felt it was obliged to do so by virtue of Ex Parte 55 (Sub-No. 43A).[11]

Section 10922(b)(1)(A) does not distinuish between general and specific commodities grants.[12] Therefore, the applicant must state that it is fit, willing, and able to provide all the service and we must so find. Normally, in specific commodity grants, a general finding will suffice for all the proposed service. But when an applicant emphatically states its unwillingness and inability to perform a certain type of service, the Commission cannot make the required finding.

Not to be deterred by such inability, the majority has opted for administrative coercion in order to solicit the needed "willingness" response from the applicant in this case. The device employed is the condition the majority has imposed which requires this applicant, and all future applicants for specific commodities authority, to accept a certificate authorizing bulk movements or be denied all authority.

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[11] The majority's reliance on the "narrowness" argument is misplaced. Certainly there was a time when we needed to guard against ill-conceived restrictions proposed to buy off prospective protestants. But today, with the minimal entry requirements of the 1980 Act, a carrier need not scale down a request at the insistence of a competitor.

[12] Nor, despite the majority's statements to the contrary, did the Fifth Circuit in *American Trucking Associations, Inc.* v. *ICC*, 659 F. 2d 452 (5th Cir., 1981) and 669 F. 2d 957 (5th Cir. 1982).

In today's deregulated environment, the hallmarks of which are liberalized entry and enhanced competition, certainly a carrier should be free to choose the service it is fit, willing, and able to provide under the statute. Yet in this proceeding, the majority is apparently so imbued with engrafting its "policy" onto the statute, that it is willing to indulge in a regulatory directive to take all or nothing in order to accomplish its purpose. Equally appalling is the possibility that pursuant to such directive, applicant could elect to take nothing, which would only serve to frustrate liberalized entry and thwart the enhancement of competition.

Wouldn't it make a great deal more sense to simply follow the clear mandate of the statute by giving this and future applicants for specific commodities authority a grant which corresponds with the service they are fit, willing, and able to provide? No artifice is required to reach this result, and in view of the counterproductive ramifications of the majority's device, the argument for strict compliance with our statutory mandate becomes even more compelling.

It is ordered:

The prior decision to issue the certificate in this proceeding is affirmed, as amplified by our discussion above.

Applicant has 30 days from the service date of this decision to either accept or reject the authorization as set forth in the appendix.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison. Commissioner Gradison concurred. Chairman Taylor, joined by Commissioner Simmons, dissented with a separate expression.

AGATHA L. MERGENOVICH
Secretary.

(SEAL)

APPENDIX

Authority issued June 3, 1982:

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *food and related products*, and (2) *chemical and petroleum products*, between points in Texas, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

EC

MAY 9 1983

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-143776 (Sub-No. 34)

C.D.B., INCORPORATED, EXTENSION--TEXAS
(Grand Rapids, MI)

Decided: April 27, 1983

Because of the controversy in this proceeding over whether a grant of the authority sought should or should not contain a restriction against the transportation of the commodities involved in bulk, we issued a decision, served March 2, 1983, in this proceeding explaining that no bulk restriction would be inserted and that applicant, C.D.B., must verify in writing to the Commission that it is willing (Decision of 3/2/83 at 11) "to accept the authority without a bulk restriction."

Applicant C.D.B.'s petition is granted. In response to that requirement, C.D.B., filed a pleading dated March 23, 1983, petitioning to have the condition eliminated. By a pleading dated March 31, 1983, protestant Steere Tank Lines petitioned us to reconsider our decision in this proceeding and to impose a bulk restriction.1/

Applicant has satisfied our requirement that it demonstrate its willingness to provide service under the certificate as issued. Specifically, C.D.B. showed (applicant's petition pp. 2-3) that it had accepted the unrestricted authority when first issued to it in June 1982 and urges that "[i]t serve (sic) no public purpose to now require the applicant to accept in writing that which it has already accepted through the initiation of service over the past several months." While the Commission may have anticipated a slightly different form of acceptance than that provided, we agree that no administrative purpose would be served by requiring C.D.B. to refile another document we might find more technically desirable. Therefore, we find that C.D.B. has satisfied the condition set out in our decision of March 2, 1983, and that applicant's petition seeking a vacation of that condition should be granted.

1/ Although limiting C.D.B.'s instant operating authority to preclude bulk transportation is the ultimate relief sought by Steere, its petition is internally inconsistent inasmuch as Steere also argues strenuously that the Commission, having issued the certificate unrestricted, may not summarily revoke it or, presumably, any portion thereof.

Protestant Steere Tank Lines' petition is denied. It asserts many of the same arguments favoring a bulk restriction that were adequately discussed by us in our March 1983 decision. It raises no significant new issues requiring further analysis. Steere's argument that we may not revoke C.D.B.'s authority if it failed to satisfy the condition requiring verification of willingness is moot: applicant has satisfied that condition. For these reasons we find that protestant Steere's petition should be denied.

Accordingly, we expressly find and order: That C.D.B. has satisfied the condition set forth at page 11 of our decision in this proceeding served March 2, 1983; that, having satisfied the condition, C.D.B.'s petition to vacate the condition will be and is hereby granted; and that Steere Tank Lines' petition will be and is hereby denied.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurred in part and dissented in part with a separate expression.

Agatha L. Mergenovich
Secretary

(SEAL)

CHAIRMAN TAYLOR, concurring in part, and dissenting in part:

I concur in granting this petition in that applicant should not be required to give up its entire certificate to satisfy the unreasonable demand that it agree to provide bulk service or else.

Where I part company with the majority statement is with respect to its convoluted interpretation of what constitutes fit, willing, and able to perform bulk service. I believe the best response to this is contained in applicant's own words in its Petition for Review, dated March 23, 1983, at 2:

> "Applicant in its several briefs filed in this matter before the Commission as well as the United States Court of Appeals for the Fifth Circuit has

> stated its position with regard to transportation of bulk commodities. It has advised the Commission and the court that it does not presently operate bulk equipment and has no intent to transport said commodities. It voluntarily requested the Commission to restrict authority against the transportation of bulk commodities." [emphasis added]

If applicant's above-stated posture demonstrates willingness and ability, then night has turned into day!

OH/ID

INTERSTATE COMMERCE COMMISSION

SERVICE DATE
SEP 29 1981

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DECISION

- - - - - -

No. MC-121794 (Sub-No. 7P)

JAMES WILKETT, D/B/A WILKETT TRUCKING COMPANY
- EXTENSION - - OKLAHOMA AND TEXAS
(Stigler, OK)

Decided: September 22, 1981

John J. McMackin, Jr., Esquire, Robert C. Bamford, Esquire, and Ed Edmondson, Esquire for Applicant.

Ann P. Van Gaasbeck, Esquire and Simon W. Oderberg, Esquire for the Office of Consumer Protection.

By William A. Shue, Administrative Law Judge:

By an appropriately filed application, James Wilkett d/b/a Wilkett Trucking Company (Wilkett) seeks a certificate authorizing operation as a common carrier by motor vehicle over irregular routes, transporting coal and coal products between points in Oklahoma and Texas. By order dated May 11, 1981, the Commission ordered the proceeding to be designated for oral hearing and directed the Office of Consumer Protection (OCP) to participate in the proceeding for the purpose of developing the record on the issue of applicant's fitness. The matter was assigned to the undersigned and an oral hearing was held in Muskogee, OK on August 11, 1981. Appearances were made on behalf of applicant and the Office of Consumer Protection. Briefs were filed by both parties and full consideration has been given to matters presented on them.

FINDINGS OF FACT

On February 12, 1981, Mr. James D. Wilkett, applicant in this proceeding, was convicted of conspiracy to distribute a controlled substance (dilaudid) and given a sentence of 15 years' confinement to the federal correctional institution at El Reno, Oklahoma. Mr. Wilkett commenced serving his sentence on February 26, 1981. Four days before he entered prison James Wilkett d/b/a Wilkett Trucking Company filed the application at issue. The application was submitted by James D. Wilkett as sole proprietor, and was supported by Great National Corporation -- Nevada; Randall & Blake, Inc., an Oklahoma corporation; and Westhoff Brothers, Inc., a Kansas corporation, all of whom are coal producers.

Testimony at the hearing consisted primarily of the presentation of prepared statements. Two shippers were present: Mr. John Heatherly, President of Heatherly Mining, Inc., and Mr. Murray A. Bennett, Supervisor of Davis Coal Corporation's coal operations. These two supporting shippers use Wilkett Trucking virtually exclusively and expressed both satisfaction with the current level of service and a desire to expand their relationship with the carrier. As producers of large amounts of coal, these shippers require large numbers of trucks available for loading in coordination with production. Wilkett Trucking equipment was stated to be both reliable and available when needed.

Mr. Jerry D. Jackson, Chairman of The Board and President of The First National Bank of Stigler, Oklahoma, testified that applicant has borrowed regularly from his bank since May 1978. The applications were made by Mr. Wilkett and his wife, Gladys. Loan payments are made regularly. Mr. Jackson expressed the opinion that Wilkett Trucking Company is in sound financial condition and is creditworthy.

Mr. J. D. Snow, a local businessman and pastor of New Hope Church in Stigler, Oklahoma, where the carrier is located, testified as to the applicant's good business reputation. He also testified as to the good character of Mr. Wilkett's wife, as well as that of Mr. Davey Wilkett and Gwen (Gwendolyn J.) Overlease, two of applicant's children who are involved in the operation of the carrier. No testimony was offered relating directly to the personal character of Mr. James D. Wilkett.

Wilkett Trucking Company's program for compliance with DOT safety regulations, ICC accounting regulations and other pertinent statutes and regulations was detailed by Mr. Clifford L. Phillips, former District Supervisor for the Commission. Mr. Phillip's became the carrier's regulatory compliance supervisor on July 1, 1981. At the time, ICC and DOT regulations were explained to carrier personnel and a program instituted to insure compliance. A visit by Mr. Phillips on August 5th revealed efforts had been and were being made to implement the compliance program. The next compliance survey to be conducted by Mr. Phillips will take place in November.

The remaining witnesses were members of the Wilkett family involved in current operations. Two of Mr. James D. Wilkett's daughters, Gwendolyn J. Overlease and Connie M. Weatherford, conduct much of the recordkeeping and office paperwork, including that involved with maintenance of the compliance program. Mrs. Gladys Wilkett shares general supervisory and dispatching duties with applicant's son Mr. Davey Wilkett.

Mr. Davey Wilkett is primarily responsible for the daily management and operations of the carrier. Before his father went to prison, the son managed the business during his father's absences for vacation or illness. Since Mr. James D. Wilkett began serving his sentence on

February 26, 1981, Mr. Davey Wilkett has assumed the position of general manager responsible for general business decisions, traffic management, supervision of operations, and maintenance supervision.

However, Mr. James D. Wilkett has not withdrawn from the active daily management of Wilkett Trucking Company. He calls his son daily. Mr. Davey Wilkett testified that these telephone calls deal with all aspects of the business including such subjects as the number of trucks that have become disabled. Mr. James D. Wilkett continues to make management decisions.

Furthermore, the applications and testimony indicate that Wilkett Trucking Company is a sole proprietorship owned by Mr. James D. Wilkett individually. Mr. Davey Wilkett, however, stated that in his opinion his father and mother were co-owners. Witness Jerry G. Jackson, the banker, testified that applicant applied for the loans, but that both husband and wife had signed the applications. This evidence is not a rebuttal of applicant's sole ownership, but rather a reflection of the fact that a family business normally includes an investment of time, credit, and effort by all members of the family, particularly the spouse. Mrs. Gladys Wilkett was not shown to have an ownership interest in the carrier.

Evidence was presented by the Office of Consumer Protection verifying the federal felony conviction of Mr. James D. Wilkett for violation of Title 21 U.S.C. § 846 (conspiring to distribute a Section II narcotic substance to wit: dilaudid). Although the conviction is on appeal, Mr. Wilkett has been denied appeal bond and did not attend the hearing.

Discussion and Conclusions

Under the applicable provision of the Interstate Commerce Act, 49 U.S.C. 10922(b)(1), the "Commission shall issue a certificate to a person authorizing that person to provide transportation . . . if the Commission finds:

> "(A) that the person is fit, willing and able to provide the transportation . . .; and
>
> "(B) on the basis of evidence presented by persons supporting the issuance of the certificate that the service proposed will serve a public purpose, responsive to a public demand or need;
>
> "unless the Commission finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity."

Fitness to conduct the transportation requires not only physical capability, but more importantly, the ability to conduct the transportation in accord with the standards set out in law and regulation. There is no assumption of fitness implicit in the fact that an applicant already holds a certificate. Lieberman, 48 M.C.C. 399, 402 (1948). It is well settled that an applicant must establish his fitness to conduct a proposed operation regardless of whether or not he has previously been found fit to conduct other operations and had been granted a certificate authorizing such operations. Trioli, 53 M.C.C. 212, 215 (1951). The applicant has the burden of refuting the import of past illegal conduct in order to prove fitness. See Kroblin Refrigerated Express, Inc. v. United States, 197 F. Supp. 39 (N.D. Iowa, 1961); Fournier's Express, Inc. Ext. - Hartford, Conn., 108 M.C.C 589 (1969); and Jones - Common Carrier Application, 96 M.C.C. 100 (1964). When the Commission's Office of Consumer Protection challenges the carrier's fitness, the latter's burden does not shift since it is the proponent of an order which requires a finding of fitness to be made. St. Johnsbury Trucking v. United States, 326 F. Supp. 938 (D.C. VT., 1971); Radke (O.C.) - Various Commodities, 113 M.C.C. 89 (1971); Eagle Motor Lines - Lincoln, 107 M.C.C. 499 (1968).

As well established as the principle of fitness is, there is no inflexible formula which must be followed in making the determination. Each case must be decided on the facts presented, due consideration being given to all facts and circumstances. Chicago Exp., Inc. - Purchase - Whippett Motor Lines, 75 M.C.C. 531, 535 (1958).

The primary objection to fitness presented is the federal felony conviction of applicant occurring immediately prior to the filing of the application at issue. OCP contends that this conviction, while not directly related to violations of the Act or Commission regulations, is clearly indicative of a total indifference toward the requirements of law. In essence, the argument is that applicant's character has been shown to be other than that of a law abiding citizen, and that applicant is therefore neither fit, willing, or able to comply with the Interstate Commerce Act and Commission regulations.

The relevance of the applicant's character was discussed in Professional Driver Services, Inc. v. I.C.C., 376 F. Supp. 536 (D.C. Tenn, 1974). The court, in its review of a Commission decision, stated, ". . . [N] derogatory proof was introduced concerning the business activities of plaintiff, plaintiff's president, or the companion business owned by him (Drive-U-Service, Inc.). No evidence was introduced which would show any business deficiency, moral or character deficiency, or failure to satisfactorily perform service in plaintiff's operations." It is implicit, if not explicit, that character deficiency in the form of a showing that applicant is a convicted felon is both relevant and pertinent to the issue of fitness to comply wih the Act and the Commission's regulations.

While it is generally true that findings of unfitness are based upon past violations of the Act or regulations, the Commission is not limited by statute or regulation to consideration of only that type of evidence. The Commission may consider any evidence relevant to applicant's ability to act in a lawful manner. In Jones, supra, the applicant was charged and convicted of four counts of unauthorized transportation. Applicant argued that his conviction on criminal charges paid his debt to society and thus that his unlawful operations should not be considered. The Commission responded, "The primary purpose of the fitness provision of the act is to protect the public from carriers whose conduct demonstrate an unwillingness to operate in accordance with the requirements of regulation . . . . . [A]pplicant has demonstrated a flagrant disregard for the law. "The applicant was found not fit and the application was denied.

During the Wilkett hearing, applicant's representatives attempted to separate the fitness of the carrier itself from the fitness of Mr. James D. Wilkett. This separation is impossible. Mr. Wilkett declared himself under oath in the application to be "owner by sole proprietorship" and "engaged full-time in the management and operations of the company." The evidence presented does not negate these statements as to ownership or management. It would be unrealistic to consider him wholly separate and apart from his status as a convicted felon, or to disassociate his status either from the public interest which dictated his confinement. Mr. James D. Wilkett is James Wilkett d/b/a Wilkett Trucking Company. Mr. James D. Wilkett is also a convicted felon. His conviction is nearly instant in time to the filing of the application and thus not so distant in time as to be stale. Therefore, this conviction clearly demonstrates an inability by applicant to comply with the law.

Ultimate Findings And Order

Upon consideration of the evidence, the briefs, and applicable law, it is found that the applicant has failed to establish that he is fit, properly to conduct the proposed operations and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The denial of this application will not significantly affect either the quality of the human environment or conservation of energy resources. The application should be denied.

It is therefore unnecessary, in light of the above findings, to consider the public convenience and necessity question and the Administrative Law Judge does not intend to discuss it. See Berger Common Carrier Application, 119 M.C.C. 894, 896 (1974), wherein it was said: "A finding of fitness is therefore, a prerequisite to a grant of motor carrier operating authority. This determination may not in turn be based upon the finding that the proposed service is required by the public. The findings concerning fitness should be based on evidence concerning applicant alone, and not on how strong a case has been presented by the supporting shippers or protestants.

It is therefore ORDERED:

That the application of James D. Wilkett d/b/a Wilkett Trucking Company be, and it is hereby, denied;

Dated at Washington, D.C., this 22ndday of September, 1981.

By the Commission William A Shue, Administrative Law
William A. Shue
Judge.

(SEAL)

JAMES H. BAYNE
Acting Secretary

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SERVICE DATE
DEC 8 1981

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-121794 (Sub-No. 7)

JAMES WILKETT, D/B/A WILKETT TRUCKING COMPANY EXTENSION
OKLAHOMA AND TEXAS
(Stigler, OK)

Decided: December 2, 1981

By an appropriately filed application, James D. Wilkett, doing business as Wilkett Trucking Company, seeks a motor carrier certificate authorizing transportation of coal and coal products between points in Oklahoma and Texas. By decision of the Commission dated May 11, 1981, the Office of Consumer Protection was directed to participate to develop the record with respect to the fitness of the applicant and the proceeding was assigned for oral hearing. There were no protestants to the application.

The Administrative Law Judge denied the application after determining that applicant's recent felony conviction demonstrated an inability by applicant to comply with the law and thus warranted finding that he had failed to establish that he is fit, properly to conduct the proposed operations and to conform to the requirements of the Commission's rules and regulations thereunder. Applicant has appealed and Office of Consumer Protection has replied.

We have considered the record in this proceeding and find the Administrative Law Judge's statement of facts to be substantially correct in all material respects. As modified and supplemented here, we adopt it as our own. Certain facts will be summarized to the extent necessary for clarity of discussion. Our conclusions differ from those reached by the Administrative Law Judge. It is our opinion that the applicant has demonstrated his fitness to conduct the proposed operation at the present time, but that the authority granted should provide for further appraisal of fitness within the next 2 years. Since the record otherwise amply warrants granting the authority as sought, we reopen the proceeding on the existing record to grant the application subject to a limitation requiring evaluation of fitness evidence to be submitted by applicant within 2 years.

Factual Background

Pursuant to existing authority, applicant transports coal from certain Oklahoma counties to certain Texas counties. Applicant's proposal to consolidate and expand its existing authority is supported by two shippers and the evidence warrants a finding that the proposed operation will serve a useful public purpose, responsive to a public demand or need. Since the application is unopposed except as to fitness, we will not discuss the evidence of need in any detail.

This proceeding was set for oral hearing with Office of Consumer Protection participation on the issue of applicant's fitness because it came to the Commission's attention that applicant had been convicted of a felony shortly before filing this aplication. Evidence submitted at the hearing establishes that on February 12, 1981, Mr. James D. Wilkett (applicant) was convicted of conspiracy to distribute a controlled substance (dilaudid) and given a sentence of 15 years' confinement to the federal correctional institution at El Reno, OK. Even though his conviction was appealed, Mr. Wilkett commenced serving his sentence on February 26, 1981.

There is no indication on the record that the activities which warranted Mr. Wilkett's conviction were in anyway related to the trucking operation or that he has violated laws and regulations applicable to motor carrier operations. Existing shippers supporting the application considered applicant's equipment to be both reliable and available when needed. The applicant's banker testified favorably concerning the financial condition of the trucking company. A local businessman and pastor in Stigler, OK, where the carrier is located, testified as to the applicant's good business reputation. He also testified as to the good character of Mr. Wilkett's wife, as well as that of Mr. Davey Wilkett and Mrs. Gwendolyn J. Overlease, two of applicant's children who are involved in the operation of the carrier. No testimony was offered relating directly to the personal character of Mr. James D. Wilkett.

Wilkett Trucking Company's program for compliance with Department of Transportation (DOT) safety regulations, Commission accounting regulations, and other pertinent statutes and regulations, was detailed by Mr. Clifford L. Phillips, former District Supervisor for the Commission. Mr. Phillips became the carrier's regulatory compliance supervisor on July 1, 1981. At the time, Commission and DOT regulations were explained to carrier personnel and a program instituted to insure compliance. A visit by Mr. Phillips on August 5, 1981, revealed efforts had been and were being made to implement the compliance program. The next compliance survey to be conducted by Mr. Phillips was to take place in November 1981.

Other witnesses were members of the Wilkett family involved in current operations. Two of Mr. James D. Wilkett's daughters, Mrs. Gwendolyn J. Overlease and Mrs. Connie M. Weatherford, conduct much of the recordkeeping and office paperwork, including that involved with maintenance of the compliance program. Mrs. Gladys Wilkett, applicant's wife, shares general supervisory and dispatching duties with applicant's son, Mr. Davey Wilkett.

Mr. Davey Wilkett is primarily responsible for the daily management and operations of the carrier. Before his father went to prison, the son managed the business during his father's absences for vacation or illness. Since Mr. James D. Wilkett began serving his sentence, Mr. Davey Wilkett has assumed the position of general manager responsible for general business decisions, traffic arrangement, supervision of operations, and maintenance supervision. Mr. James D. Wilkett calls his son daily. Mr. Davey Wilkett testified that these telephone calls deal with all aspects of the business including such subjects as the number of trucks that have become disabled.

Discussion and Conclusions

A finding of fitness is a prerequisite to a grant of authority under the applicable provision of the Interstate Commerce Act, 49 U.S.C. 10922(b)(1). There is very little precedent concerning consideration of nontransportation related misconduct in determining the fitness question, and, consequently, the criteria applicable to misconduct in fitness cases are usually stated in terms assuming the misconduct is transportation related. A typical statement of such criteria appears in Tennessee Cartage Co., Inc., Extension - Georgia, 128 M.C.C. 819, 821 (1978).

> In determining an applicant's fitness, consideration must be given to the nature and extent of an applicant's misconduct, if any, and any mitigating circumstances; whether an applicant's mis-

> conduct represents a flagrant and persistent disregard of the provisions of the act and our rules and regulations; whether an applicant has made an effort to correct past mistakes; and whether applicant is willing and able in the future to comport its operations to the requisite standards. Fitness must be determined on the basis of the unique facts and circumstances in each proceeding. Melton Truck Lines, Inc., Extension-Roofing, 88 M.C.C. 723 (1962); L & M Express Co., Extension-Crewe, Va., 106 M.C.C. 334 (1968); and Johnny Brown's Inc., Extension-Winchester, Va., 111 M.C.C. 905 (1970). These considerations are critical for otherwise a denial on fitness grounds would be merely a punitive measure instead of being properly aimed at protecting the shipping public and others from continuing misconduct by a carrier.

It is clear that past willful misconduct is not, as a matter of law, sufficient to bar a grant of authority. It may be considered as an element in assessing the applicant's present and prospective fitness. Armored Carrier Corporation v. United States, 260 F. Supp. 612, 615 (E.D. NY 1966). We note first that applicant's misconduct has not been shown to relate in anyway to his existing or proposed trucking operations and cannot be considered flagrant and persistent disregard of transportation related laws or regulations. It is also clear that his company is now being managed in such a manner as to insure that its operations will be in compliance with the laws, rules, and regulations governing interstate motor carriers. The Commission responsibilities in considering fitness of a motor carrier applicant are not directed toward punishment of misconduct, whether transportation related or not, but are to protect the public and others from continuing misconduct by a carrier. Without in anyway condoning applicant's misconduct in other areas, we are satisfied that he has demonstrated that his trucking operation is being conducted in compliance with applicable law and regulations. In order to ensure that such compliance continues into the future, we will provide applicant the opportunity to submit additional evidence of compliance within the next 2 years. Applicant's appeal indicates that he would not object to such a requirement and that he welcomes such an opportunity.

We find:

Performance by applicant of the service described in the appendix will serve a useful public purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to the statutory and administrative requirements. This action will not significantly affect either the quality of the human environment or conservation of energy resources. An appropriate certificate should be granted.

It is ordered:

The decision of the Administrative Law Judge dated September 22, 1981, is vacated to the extent it is inconsistent with this decision.

The application is granted to the extent set forth in the appendix. Operations may begin only following the service of a certificate and upon compliance with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

This decision will take effect 15 days from its date of service.

By the Commission, Division 1, Acting as an Appellate Division, Commissioners Clapp, Gresham, and Taylor. Commissioner Taylor did not participate.

Agatha L. Mergenovich
Secretary

(SEAL)

NOTICE: This proceeding is now administratively final within the meaning of 49 CFR 1101.2(f) of the Commission's regulations; and, in accordance with the provisions of Section 558(c) of the Administrative Procedure Act, any corresponding temporary authority expires and operations thereunder must cease upon the effective date of this decision, except that to the extent permanent authority is granted in this proceeding (and if partial, only to that extent) the corresponding temporary authority or portion thereof will continue in effect until a certificate or permit is issued and becomes effective. The filing of any further pleadings in this matter will not stay the expiration of the temporary authority related to the denied portion of the sought permanent authority.

No. MC-121794 (Sub-No. 7)

APPENDIX

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting coal and coal products between points in Oklahoma and Texas. This authority will continue for a period ending 2 years from the date of certificate issuance. Within the 3 months prior to the end of the 2-year period, the carrier may request permanent extension of the authority by filing an appropriate pleading requesting reopening of the proceeding to receive tendered evidence of continuing fitness, willingness, and ability to provide the authorized operations in compliance with all applicable laws and regulations governing motor carrier operations. Unless the carrier submits acceptable evidence of continuing fitness, this certificate will terminate at the end of the 2-year period.

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SERVICE DATE

MAR 11 1982

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-121794 (Sub-No. 7)

JAMES WILKETT, D/B/A WILKETT TRUCKING COMPANY, EXTENSION - OKLAHOMA AND TEXAS
(Stigler, OK)

Decided: February 23, 1982

Before us is a discretionary appeal filed by the Commission's Office of Compliance and Consumer Assistance, and a reply by applicant. Because the introduction of new evidence here materially affects the prior action in this proceeding, we will grant the appeal.

The continuing issue for resolution in this proceeding is applicant's fitness to receive a certificate to transport coal and coal products between points in Oklahoma and Texas. The application was filed 10 days after applicant was convicted, on February 12, 1981, of conspiring to distribute the narcotic dilaudid, a felony under federal law. He was sentenced to 15 years in prison. By decision served September 29, 1981, an Administrative Law Judge found applicant unfit to receive the sought authority and denied the application. He concluded that the conviction demonstrated an inability by applicant to comply with the law. A decisive factor to the ALJ was applicant's status as an individual having sole ownership of the company, who was engaged full-time in its management and operation. By decision served December 8, 1981, however, Division 1 reversed, found applicant fit, and granted the application subject to a two-year term limitation to ensure compliance with all applicable laws and regulations governing motor carrier operations. It concluded that applicant's misconduct had not been shown to relate in any way to his trucking operations and could not be considered flagrant and persistent disregard of transportation related laws or regulations. The responsibilities of the Commission in considering fitness, it stated, are not directed to punishment of misconduct, but rather to protecting the public from continuing misconduct by a carrier. In this regard, applicant had demonstrated that his trucking operation had been and was being run in a lawful manner.

The Instant Pleadings

The Office of Compliance and Consumer Assistance (OCCA), actively engaged in this proceeding since the beginning, introduces new evidence of applicant's unfitness to receive the involved authority. On November 25, 1981, applicant was convicted by an Oklahoma state court of second degree murder and sentenced to a 15-year prison term to begin after completion of his sentence for his prior felony conviction. OCCA argues that this second felony conviction within 10 months of the first, while not transportation related, nevertheless is indicative of applicant's continuing disregard for the law in general and specific inability to comply with motor carrier law. Applicant responds that the last decision correctly states and applies the pertinent law: that past willful misconduct, even if transportation related, is not in itself sufficient to bar a grant of authority, and that the Commission's sole concern is whether the carrier will be operated in compliance with the applicable law. Applicant concludes that no evidence exists that the carrier has operated or will operate unlawfully, and that to deny this application would constitute additional punishment for his crimes and not regulation of transportation in the public interest.

Discussion

We argee with OCCA's position and believe applicant is unfit to receive the involved authority. The two prior decisions in this proceeding dealt extensively with the legal precedents applicable to this matter and we will not redevelop their history here. We will, however, restate certain salient principles. Fitness to conduct transportation services involves, among other things, the ability to comply with applicable laws and regulations. There is no presumption of fitness; an applicant must affirmatively establish it each time new authority is sought. No special or inflexible formula exists by which to determine it. Past willful misconduct is an element to be considered only insofar as it relates to a carrier's present and prospective ability to comply with the Interstate Commerce Act and applicable regulations.

Relating this to the instant case, we note that what is involved here is not simply an officer or shareholder of a corporation or partnership whose own personal fitness can somehow be separated from the carrier's overall fitness. Applicant himself is the motor carrier seeking authority here. It is impossible to separate his fitness from the carrier's. Applicant's most recent conviction for second degree murder shows a flagrant disregard for the most basic and sacred of human values. It is inconceivable to dissociate the public interest which mandated his incarceration for this crime from the public interest which we must consider in deciding whether or not to grant him authority to serve it. We cannot here, then, conclude it likely that he would conduct himself as a motor carrier with any greater respect for those laws and regulations applicable to such carriers than he has with regard to those laws applicable to him as an individual. A finding of unfitness is, therefore, mandated.

We find:

Applicant is unfit to receive the sought authority. The application should be denied.

It is ordered:

The decision of Division 1, served December 8, 1981, is vacated.

The application is denied.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Clapp and Gresham. Commissioner Gresham dissented with a separate expression. Commissioner Sterrett did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

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COMMISSIONER GRESHAM, dissenting:

I am shocked at the majority's failure to accord due process to this applicant. Based on new evidence, to which the Commission has given applicant no opportunity to respond, the majority rules against this carrier. My sense of justice is offended by this Constitutional failure. The applicant, in my opinion, has an absolute right to an opportunity to respond to the new evidence, a right which this Commission cannot extinguish. Thus, the legally proper procedure would be to accept the new evidence, allow applicant to respond to the evidence, and to further consider the fitness issue in light of the entire record as supplemented.

In addition to these procedural defects, I must note that nowhere in its decision does the majority mention the past and present lawful, violation-free regulated transportation provided by this applicant. Further, the majority carefully omits any reference to the fact that the applicant's operations are being conducted by members of his family who, based on this record, have been, and are, law abiding citizens.

These omissions in the majority's decision and its failure to give any recognition to due process of law, seem to indicate that the majority's ruling is a punitive one. In cases too numerous to cite, the Commission has for many years indicated that fitness is not to be used as a punitive measure. I can only wonder why the majority has reversed this long standing case law and chosen to use applicant as a scapegoat because the decision fails to address these issues.

The real purpose of the statutory fitness requirement is public protection. I again can only wonder how this public purpose is in any way served by the majority's ruling. In this same vein, I must mention that but for the form of the applicant's business, i.e. a sole proprietorship, the majority apparently would have found the applicant fit.

This unfortunate placement of form over substance, in my view, does not serve to foster public protection.

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SERVICE DATE
JAN 25 1983

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-121794 (Sub-No. 7)

JAMES WILKETT, D/B/A WILKETT TRUCKING COMPANY, EXTENSION -
OKLAHOMA AND TEXAS
(Stigler, OK)

Decided: January 18, 1983

By our decision of August 13, 1982, we reopened this proceeding for reconsideration on the present record subject to the approval of the United States Court of Appeals for the District of Columbia Circuit. The Court granted our motion for voluntary remand on September 16, 1982.

Wilkett Trucking Company applied for motor common carrier authority to transport coal and coal products between points in Oklahoma and Texas. The application was unopposed and the evidence supported a need for the scope of the proposed service. By an order of the Commission, however, the Office of Compliance and Consumer Assistance (OCCA) was directed to participate in the proceeding to develop the record on applicant's fitness.

At the oral hearing, OCCA attorneys presented evidence that James D. Wilkett, the owner of Wilkett Trucking, was in federal prison on conviction of conspiracy to distribute drugs. Wilkett began serving his 15-year sentence four days after the application was filed with the Commission.[1] OCCA attorneys argued that Wilkett Trucking is a sole proprietorship owned and managed by James Wilkett. They contended that because of the close relationship between the company and Wilkett, Wilkett's personal fitness could not be separated from his company's fitness.

Several witnesses testified in favor of a grant of authority to Wilkett Trucking. Wilkett's son, David Wilkett, testified that he had been responsible for daily management of the business since his father's incarceration. He stated that the company is a family-run business and owned jointly by Wilkett and his wife. David Wilkett acknowledged that his father calls him from prison daily and they discuss business. His father still makes some management decisions.

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[1] On November 25, 1981, James Wilkett was convicted of second-degree murder by an Oklahoma state court and sentenced to a 15-year prison term to be served consecutively with his previous sentence. Wilkett's conviction is on appeal.

Wilkett Trucking has operated in interstate commerce since 1978 and there is no evidence of record to show any violations of transportation laws or regulations.

Further, two shippers testified to the dependable service they had received from Wilkett Trucking. Other witnesses testified to the carrier's good business reputation and the personal fitness of Wilkett's family. No evidence of James D. Wilkett's personal fitness was presented. Finally, evidence was adduced that Wilkett Trucking has hired a supervisor (a former Commission employee) to inform the company of DOT safety regulations and ICC accounting regulations.

The issue presented by this proceeding is whether the conviction of a trucking company's president and sole proprietor for murder and drug offenses justifies finding the company unfit to receive an ICC license. In the prior decision, the entire Commission noted that the applicant and Wilkett Trucking are, legally speaking, one and the same person. The Commission concluded that applicant's fitness could not be separated from that of Wilkett Trucking, and found that applicant's recent murder conviction indicated such a basic disregard of human values that it was unlikely that applicant's motor carrier operations would be conducted with any greater respect for the laws and regulations applicable to such carriers. On this basis, applicant was found unfit and the request for authority was denied. We have reopened the proceeding to provide a more complete explanation of our decision to deny the authority sought.

Specifically, at issue here is applicant's fitness, willingness, and ability "to comply with this subtitle and regulations of the Commission;" see 49 U.S.C. 10922(b)(1)(A). Each applicant has the affirmative burden of proving its fitness each time it seeks authority from this Commission. An applicant's past misconduct is an element to be considered in determining its fitness to the extent that misconduct relates to the carrier's present and prospective ability to comply with the Interstate Commerce Act and the Commission's regulations. A denial on fitness grounds is not intended to be punitive in nature, but is warranted to protect members of the public from continuing misconduct by the carrier, and evidence of a carrier's willingness to correct past mistakes should be considered in making a determination of an applicant's fitness.

While we recognize that applicant is presently incarcerated, and does not exercise complete dominion over the operations of Wilkett Trucking, we note that applicant, in his appeal of the initial decision in this matter, concedes that his fitness and that of his trucking company cannot be separated from each other. Certainly, applicant as the sole proprietor of Wilkett Trucking has the legal power to control the operations of Wilkett Trucking whether or not that power is fully exercised, see 49 U.S.C. 10102(6). Under the circumstances, we affirm the prior conclusion that applicant's fitness and that of Wilkett Trucking are inseparable. Applicant's willingness to commit the felonies he has been convicted of is certainly a sound basis for concluding he would also be willing to commit the lesser offenses proscribed by statutes administered by this Commission.

While there is no evidence that Wilkett Trucking has operated in violation of the Commission's licensing requirements or its regulations, and it has hired a regulatory compliance supervisor to assure continued compliance with these laws and regulations, we conclude that this evidence is insufficient to rebut the presumption of unfitness raised by applicant's felony convictions.

Applicant appears, on this record, to be a person who is willing to comply with present licensing and operation requirements because these requirements are not overly onerous. Hisnarcotics and murder convictions reveal that applicant is also willing to disregard laws designed to protect the most basic of human values when it is convenient for him to do so. Moreover, because applicant is already in prison, and seems likely to remain there for a considerable time, the civil and criminal penalties that help us enforce our Act and regulations seem likely to have far less of a deterrent effect on applicant than they would on someone not presently incarcerated. Applicant's past actions lead us to believe that applicant would be perfectly willing to conduct illegal transportation operations in the future if he should find it in his interest to do so.

At bottom, we must balance what we see as a genuine risk of future noncompliance against applicant's assurances that he will conduct his operations lawfully. Given applicant's demonstrated inability to live within the law, we believe the public interest in authorizing new authority only to those applicants demonstrating fitness to hold it requires a denial in this instance. Accordingly, we affirm our prior decision finding applicant unfit.

We find:

Applicant has failed to demonstrate that he is fit to conduct the proposed operation.

No. MC-121794 (Sub-No. 7)

It is ordered:

The prior decision of February 23, 1982, in this proceeding, to the extent inconsistent with this decision, is vacated and set aside.

The application is denied.

This decision will take effect 25 days from its date of service.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Andre dissented. Vice Chairman Gilliam did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

Notice: This proceeding is now administratively final within the meaning of 49 CFR 1101.2(f) of the Commission's regulations; and, in accordance with the provisions of Section 558(c) of the Administrative Procedure Act, any corresponding temporary authority expires and operations thereunder must cease upon the effective date of this decision, except that to the extent permanent authority is granted in this proceeding (and if partial, only to that extent) the corresponding temporary authority or portion thereof will continue in effect until a certificate or permit is issued and becomes effective. The filing of any further pleadings in this matter will not stay the expiration of the temporary authority related to the denied portion of the sought permanent authority.

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SERVICE DATE
OCT 26 1983

INTERSTATE COMMERCE COMMISSION

DECISION ON REMAND

DOCKET NO. MC-121794 (Sub-No. 7),

JAMES WILKETT d/b/a WILKETT TRUCKING COMPANY,
EXTENSION-OKLAHOMA AND TEXAS

(Stigler, Oklahoma)

Decided: October 13, 1983

Applicant James Wilkett Trucking Company seeks authority to transport coal and coal products between points in Oklahoma and Texas. In a decision served January 25, 1983, we denied the application on the grounds that the drug and second-degree murder convictions of its owner (James Wilkett) rendered the company unfit to receive a license.

The United States Court of Appeals for the District of Columbia Circuit reversed the decision and remanded the case to the Commission. James Wilkett d/b/a Wilkett Trucking Company v. Interstate Commerce Commission et al., 710 F.2d 861 (D.C. Cir. 1983). The Court found that our determination "that James Wilkett's convictions were indicative of a predisposition on the part of the company to violate trucking statutes and regulations . . . is unreasonable." 710 F.2d at 865. The Court also concluded that James Wilkett's fitness was severable from that of his company. 710 F.2d at 866. Because the sole issue was the applicants' fitness,[1] and the Court found that the Commission erred in its reasoning and conclusion on this issue, it instructed the Commission to issue Wilkett a certificate. The Court also stated [710 F.2d at 869]:

> However, the Commission did not have the opportunity to consider whether the new, expanded operating authority should be unqualified or issued for a limited time period, subject to review. Therefore, the case is remanded to the Commission for the purpose of promptly issuing the authority with such reasonable time limitations as it deems necessary.

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[1] Whether Wilke[illegible] service will serve a useful public purpose responsive to a public demand or need has never been an issue in this proceeding.

Therefore, we must now address on remand whether to issue Wilkett Trucking a qualified or unqualified certificate.

Even though the Court gave the Commission the option of granting Wilkett a limited-term certificate, the tenor of the Court's decision is that Wilkett's convictions do not create a cloud over his company's fitness. The Court stated that the Commission erred in finding the applicant unfit and instructed the Commission to issue a certificate. Therefore, for all practical purposes, Wilkett had to be considered fit after the Court's decision. Because the Court gave no indication on what grounds only a limited-term certificate could be issued when, as here, the Commission is compelled to find Wilkett fit, we can discern no reason to limit the authority. Moreover, as a practical matter, if the Commission issued Wilkett a limited-term certificate but found Wilkett to be engaged in misconduct during the term, it would not have to wait until the end of the term to take action but could suspend or revoke the certificate either on our own initiative or on a carrier's complaint. 49 U.S.C. 10925. On the other hand, if Wilkett did not engage in misconduct during the term, we would simply renew the authority.

For the above reasons we see no justification for limiting Wilkett's certificate to a specified term.

It is ordered:

The application is granted to the extent set forth in the certificate. The authority is granted without restriction.

The attached certificate will become effective upon the service date of this decision.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor and Commissioner Andre concurred with separate expressions. Commissioner Gradison would have issued a two-year limited term certificate.

AGATHA L. MERGENOVICH
Secretary

(SEAL)

CHAIRMAN TAYLOR, concurring:

I have reluctantly concurred in this decision, but only because we have been specifically directed by the Circuit Court to issue the authority in question.

Mr. Wilkett, who has twice been convicted of serious felonies and who is now serving two 15-year sentences, is seeking to expand his trucking operations. In reversing the Commission's denial of the authority requested, the Court concluded that the fitness of James Wilkett, as an individual, was severable from that of James Wilkett operating as a sole proprietorship, d/b/a Wilkett Trucking Company. Then, based upon this fictional distinction without a difference, the Court went on to hold that the Commission's fitness inquiry should have focused upon James Wilkett's sole proprietorship instead of James Wilkett.

Being a sole proprietorship, Mr. Wilkett has the legal power to control the operations of Wilkett Trucking Company, and as the uncontroverted evidence of record demonstrates, he manages these operations from his place of confinement through daily telephone conversations with his son. More importantly, the actual applicant in this proceeding was James Wilkett, d/b/a Wilkett Trucking Company, and the certificate we have been directed to issue will be in his name. Accordingly, it is obvious that the Court not only relied upon a fictional distinction (i.e., that Mr. Wilkett and his trucking company are separate entities), but to further confuse matters, the Court failed to consider the fitness of the actual applicant.

The Commission's responsibilities, in evaluating the fitness of an applicant, are designed to protect the public from unscrupulous operators. Mr. Wilkett, the applicant in this proceeding, has been convicted of murder and drug trafficking, both of which offenses demonstrate, at least to me, Mr. Wilkett's predilection to disregard the law. Moreover, for the Commission to find Mr. Wilkett fit, despite his conviction for conspiracy to distribute narcotics, hardly seems to be an appropriate stance for a federal government agency, particularly when so many resources of that same government are now committed to the fight against drug trafficking. To think that Congress contemplated such a bizarre result is a conclusion I am unable to draw.

Consequently, I believe the Court's decision was erroneous. However, since the Commission failed to reach a majority on the question of seeking a rehearing, we are obliged to abide by the Court's directive, even though the facts of this case should have mandated the pursuit of further judicial review.

COMMISSIONER ANDRE, concurring:

Although I am relieved that justice has been done in this case, I regret that the Wilkett family has been made to bear the expense of the court appeal and that potential customers have been deprived of the company's services in the interim.

OP-AEA-26
(Rev. 5/83)

INTERSTATE COMMERCE COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

MC 121794 SUB 7

SERVICE DATE
OCT 26 1983

JAMES WILKETT
DOING BUSINESS AS WILKETT TRUCKING COMPANY
STIGLER, OKLAHOMA

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will become effective only when the carrier has met the compliance requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043), the designation of agents upon whom process may be served (49 CFR 1044), and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document and will be valid as long as the carrier maintains compliance with the above requirements.

By the Commission.

(SEAL)

Agatha L. Mergenovich
Secretary

Note: If there are any discrepancies regarding this document please notify the Commission within 30 days.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting coal and coal products between points in Oklahoma and Texas.

Mr. TAYLOR. In any event, on December 14, 1982, the request was made that the applicant be granted a 2-year certificate. The General Counsel did not agree in that. The General Counsel felt very strongly about this case at the very outset. This applicant is unfit and should never have received authority.

In any event, going back to August 8, 1983, the Commission—Commissioner Gradison did vote with me and at this point in time, Commissioner Sterrett, having voted initially to find him unfit, then voted with Commissioner Andre to oppose any appeal to the court decision. And on October 26, 1983, the Commission, comprised of Sterrett and Gradison—I had a separate expression, and Commissioner Andre had a separate expression, and Commissioner Gradison noting that she would have accepted a 2-year term, approved a decision in issuing the certificate, but only pursuant to the court order. I felt that the court decision was absolutely out of line and I would like to just quickly address that.

The final chapter in the story, although there is one more later development insofar as Commission action is concerned, is that on October 26, 1983, a certificate was issued to Mr. James Wilkett, d.b.a. Wilkett Trucking Co., and that is an important point because Mr. Wilkett, his trucking company is not a partnership, it is not a corporate entity, it is Mr. James Wilkett himself as an individual doing business as Wilkett Trucking Co.

Mr. SHUSTER. Is he in prison now?

Mr. TAYLOR. He is in prison now.

In my comments with respect to the decision, I spoke as follows: In reversing the Commission's denial of the authority requested, the court concluded that the fitness of James Wilkett as an individual was somehow severable from that of James Wilkett operating as a sole proprietorship, d.b.a. Wilkett Trucking Co. Based upon this fictional distinction, without a difference, the court went on to hold that the Commission's fitness inquiry should have focused upon James Wilkett's sole proprietorship instead of James Wilkett. Now, how you make that difference, I do not know. If that did not mandate some kind of an appeal, I don't know what would.

But, in any event, being a sole proprietorship, Mr. Wilkett, as the uncontroverted evidence demonstrates, managed his business with daily conversations with his son—I will come back to that in a moment too. I felt that—I was advised to point out that the court failed to consider the fitness of the actual applicant, who is James Wilkett, that he had been convicted of murder and drug trafficking, both of which events demonstrate, at least to me, predilection disregard to the law, moreover for the Commission to find him fit despite his conviction to distribute narcotics hardly seems to be an appropriate stance for a Federal Government agency, particularly when some of the resources of that same Government are now committed to the fight against drug trafficking, and I concluded with the remarks that the facts of this case should have mandated the pursuit of further judicial review.

I might point out that Commissioner Andre, in his decision, issued an apology to Mr. Wilkett and his family by stating that he was relieved that justice had been done in this case. He regrets that the Wilkett family has been made to incur the expense of the

Court of Appeals and that potential customers have been deprived of the company's services in the interim.

Now, I must say that——

Ms. GRADISON. Could you point out——

Mr. TAYLOR. You will have your chance.

Ms. GRADISON. Could you point out that I voted——

Mr. TAYLOR. I already pointed that out and you will have your opportunity.

On November 3, 1983, I received a letter from the warden of the prison in which Mr. Wilkett was incarcerated, and he apparently sent a copy of the Washington Times story and specifically the cartoon that appeared. I will not read his entire letter, but he stated:

> Because it is against Bureau of Prisons' policy to allow inmates to conduct business while incarcerated, I would appreciate any documentation to substantiate the Times news story. If it is in fact true, disciplinary action will be taken against Mr Wilkett because he has committed a prohibited act.

[Laughter.]

The important part of this letter is that just in case Mr. Wilkett must authorize the release of the requested information, please find attached his authorization for the release. Mr. Wilkett states to me, this is the Warden speaking, that he is not and has not been conducting any trucking business telephonically, and he seemed anxious to get the matter resolved. So, the fact of the matter is, despite the sworn and uncontroverted evidence of record, this individual that we were forced to issue a certificate to and find fit is also now engaged in lying to the warden about the extent of his involvement in running the trucking operation.

And in response to the warden's letter, by letter dated November 9, 1983, we forwarded to the warden all Interstate Commerce Commission decisions, portions of verifiable statements signed under oath by James Wilkett and submitted in support of the application, portions of appeal filed on October 22, 1981, by his attorneys, and excerpts from the sworn testimony of Mr. Wilkett during oral argument filed on August 11, 1983, and it is my understanding that disciplinary proceedings at the prison are going to ensue.

Now, that is the Wilkett case, and how you find an individual like that fit, I do not know. How you make the distinction that the court made between James Wilkett, the individual, and James Wilkett, the trucking company, and then turn around in the next breath and say this is a matter that should not further be appealed, I do not know. I think the decision is absolutely outrageous and when we get done discussing this one, if my colleagues would like to comment, I would also like to talk about a safety fitness case.

Mr. SHUSTER. My problem is the time we have here, and I would certainly like all of you to respond, if you would like, on this case or any other. I must proceed to several questions that I have at this point.

But before I do that, Mr. Chairman, I would ask unanimous consent that a letter to our Subcommittee from the Honorable John Seiberling, a Member of Congress, concerning the Motor Carrier Act of 1980 and the Motor Carrier Ratemaking Commission be made a part of the record.

Mr. ANDERSON. There being no objection, it is so ordered.

[The letter referred to follows:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., November 16, 1983.

Hon. GLENN ANDERSON,
Chairman, Subcommittee on Surface Transportation,
Washington, D.C.

DEAR MR. CHAIRMAN: Today, in your oversight hearings on the Motor Carrier Act of 1980, I hope that you will pay close attention to the ICC's recent actions relating to antitrust immunity for collective ratemaking.

As you know, in passing the 1980 deregulation measure, Congress created the Motor Carrier Ratemaking Study Commission to investigate the collective ratemaking process in the trucking industry and to report back to Congress on the need or lack of need for such continued immunity. I was one of the three Members of Congress appointed by the Speaker to serve on that Study Commission. The Study Commission's report, submitted to Congress on June 1, 1983, called for elimination of all antitrust immunity for collective ratemaking.

It is my understanding that now, in part at least pursuant to the Study Commission's recommendation, the ICC has proposed to administratively withdraw the immunity for shipments of under 1,000 pounds, and moreover, is seeking comments on whether antitrust immunity should be withdrawn altogether from motor carrier rate bureau activity (Ex Parte No. MC-172). Whether the ICC has the authority to take such administrative action absent express Congressional directive is an important question which you must consider, but which I will not deal with in this letter. Instead, given the reliance of the ICC on the Study Commission's findings and recommendations, I am taking this opportunity to provide you with some background on the Study Commission's actions.

The Study Commission's recommendation was far from unanimous. When we first voted on a report in December, 1982, the proposal to eliminate antitrust immunity failed on a 5-5 vote. Later, after the beginning of a new Congress resulted in a change in Study Commission membership, the proposal was approved, but only by a 6-4 vote.

All House members of the Study Commission, Congressman Robert Roe, Congressman Bud Shuster and myself, joined by public member Stephen Murphy, voted against the proposed recommendation. As we pointed out in our minority report, the majority adopted its single sentence recommendation without thorough substantive Commission discussion. I for one felt that an insufficient effort had been made by the Study Commission to tie our investigation and proposals in with the impact on the industry of the economic conditions then prevailing. At the time, the recession was hitting the trucking industry particularly hard. Moreover, Congress had just passed the highway bill containing heavy duty vehicle taxes, truck equipment excise taxes, and gas and diesel taxes. In light of that double-barreled blast at the industry, I felt the time was not right to impose another terrific burden on the carriers by eliminating antitrust immunity for collective ratemaking.

Whether conditions have changed sufficiently to act on this matter at this time, and whether the ICC's proposal is in line with the intent of the Motor Carrier Act, are policy matters which your Subcommittee will take into consideration, I am sure. But I did want to bring to your attention the somewhat tenuous nature of the Study Commission's recommendation and urge you to inquire into whether the ICC may have given unwarranted weight to the Study Commission majority recommendation in drawing up the proposed rule.

Sincerely,

JOHN F. SEIBERLING,
Member of Congress.

Mr. SHUSTER. Thank you.

Then I would like to turn at this point and ask you some questions concerning rate bureaus.

First of all, section 14 of the Motor Carrier Act of 1980 made extensive changes with respect to the function of the motor carrier rate bureaus. The provisions of section 14 were perhaps the hardest fought provisions in the bill. As a result of section 14, the rate bureaus had to file revised agreements with the ICC. The act has been in effect for over 3 years and it is the subcommittee's understanding that none of these agreements have been approved.

If this is true, what are the reasons for the delay in acting upon these agreements?

Mr. TAYLOR. I am not aware of any specific reasons for a delay. Howell Sporn is here from our Office of Proceedings, and he may be able to give you some specifics. All I can tell you is that they are being worked upon.

Mr. SHUSTER. How long would it take?

Mr. SPORN. We are reviewing proceedings——

Mr. ANDERSON. Would you identify yourself for the record, please?

Mr. TAYLOR. I will introduce him while he is coming forward.

His name is Howell Sporn and he is in our Office of Proceedings, and he is in charge of the Motor Carrier Section.

I think he can give you the specifics.

Mr. SPORN. There was some delay to a point because of Ex Parte No. 297 (Sub-No. 5). Since last November when my section had responsibility for this, we have been working expeditiously to get the cases reviewed.

Mr. SHUSTER. Who had responsibility before last November?

Mr. SPORN. I really cannot respond to that.

Mr. SHUSTER. Mr. Chairman, who had responsibility before last November? Somebody had responsibility before last November.

Mr. TAYLOR. We reorganized the Office of Proceedings, maybe that is what you are making reference to.

Mr. SHUSTER. What concerns me is if under the act the rate bureaus had to file revised agreements with the ICC, and they did so, and the act has been in effect for over 3 years, and none of these agreements have been approved.

Now, is that good management?

Mr. TAYLOR. If it has taken that long, I would agree with you. It should have happened quicker. All I can tell you is that as of now, they are being worked on assiduously on a priority basis.

Mr. SHUSTER. How soon do you think they will be?

Mr. TAYLOR. How long do you think it is going to take?

Mr. SPORN. I think it is fair to say within a period of several months we will have at least the initial review of all the general commodities rate bureaus before the Commission, hopefully approved or provisionally approved, depending on what the Commission chooses to do with them.

Mr. SHUSTER. Do you have adequate staff at the Commission?

Mr. SPORN Yes, I do.

Mr. TAYLOR. His office is one that has plenty of staff. Other areas have probably——

Mr. SHUSTER. I would hate to think how long it would take if he were understaffed.

Mr. TAYLOR. Hopefully not another 3 years.

Mr. SHUSTER. The Motor Carrier Act of 1980 created the Motor Carrier Ratemaking Study Commission. That Commission has submitted its report to the Congress and the President. The report contained recommendations by the majority of the Commissioners along with the minority recommendations submitted by four of the Commissioners. In fact, I think it is important to note that the Study Commission was deeply divided and the vote, I guess in some cases, were five to four, and I guess what, six to four in some cases.

The purpose was to supply the Congress with information on antitrust issues involving collective ratemaking.

How does the Commission interpret those recommendations from the Study Commission?

In other words, are the recommendations viewed as being advisory or mandatory to the Commission?

Mr. TAYLOR. I think that Congress reserved for itself the right to ultimately determine that proposition.

I guess what you are leading up to is Ex Parte 172 where the Commission has undertaken to examine the matter of antitrust immunity, at least in response to the NASSTRAC and the Drug and Toilet Preparation traffic conference for the possible removal of antitrust immunity insofar as small shipments are concerned. And again because the matters are related if you do not mind, I would like to just make reference quickly to the cases we have already discussed because they are part and parcel of this whole picture as far as the Commission is concerned, and I do not want to again go back and repeat my comments about Ex Parte No. 166, about Ex Parte No. 128, about the lack of suspensions. I think they are best summarized in the NASSTRAC petition which we received, because there is a whole series of events that have transpired. And what finally they said, on page 7 of their petition, was that——

> During the past 2 years, the two elements necessary for collective ratemaking to be in the public interest, i.e., restraint on the part of the bureaus and the restraining hand of the Commission, have been notably absent. The Commission has thrown the door open to any and all collectively made rate increases and rate restructures. The carriers, faced with increased competition on larger shipments and imbued with a normal (or perhaps above-normal) desire for revenue increases, have rushed through the open door, time and time again, to grab as much revenue as they can from their captive shippers. Faced with this unrelenting attack by the rate bureaus, NASSTRAC and the D&TPTC have come to the conclusion that the solution to the problem . . . is to remove the carriers' collective ratemaking authorization over small shipments.

Now, to me it is quite simple, and I do not think there is any disagreement with my colleagues, except for Commissioner Andre, on this point that regulation and antitrust immunity go hand and hand. That no regulation or total deregulation would be accompanied by the absence of antitrust immunity. The important thing is that if you are going to have rates set by other than the free market, by the rate bureaus in effect, if that is going to happen, then the Commission has a role and responsibility to play. How Commissioner Andre has arrived at that conclusion that everything ought to be deregulated as soon as possible and antitrust immunity ought to remain, I do not know. He is here and he can explain his part.

As far as I am concerned, and I think I speak for the other two, at least on this point, regulation and antitrust immunity go hand in hand. Where we part company is that I felt there was a specific problem insofar as shipments under a thousand pounds are concerned I was asked one time, when we were on the Senate side, as to how I felt about the Commission taking it unto itself to relieve antitrust immunity, to take it away, and I responded that on a general basis, across-the-board, it was very, very clear to me that the Congress, by instituting the Ratemaking Study Commission, had reserved that matter unto itself. It did not intend the Commission to do it across-the-board for all concerned.

This petition came in, specifically I think you have seen what we have talked about, smaller shippers, they contend, are people under a thousand pounds have to bear disproportionate increases, and yet the rates are not being set by the free market. They are being set by rate bureaus.

Now, all these people said in this NASSTRAC petition was, look, if you are not going to pay any attention, if you did not develop the information in Ex Parte No. 166, if you did not establish any standards in Ex Parte No. 128, if you never suspend anything which we have not, then, for God's sake, let our rates be set in the free market. And that is what they asked for just as to these small shipments. That is what the proceeding was intended to do, that is the way the rulemaking was promoted.

Once again, however, trying to do a very delicate scalpel job on the specific problem, along come my colleagues and decide, no, let us hit it with a sledge hammer. Let us open it up so that perhaps we can do away with antitrust immunity for everybody. Now, that is what the rulemaking says. That has not been decided yet. It is a pending proceeding. Comments have been solicited. They have been delayed on all matters until the 12th of December. I would have preferred to contain the proposition only insofar as the specific request shipments of less than 1,000 pounds. It has now been opened up to the extent that comments will be solicited, and I am sure received, on the broader question of whether or not antitrust immunity should be removed in other areas as well. That is the background of exparte No. MC-172.

My posture is, and I did this very carefully with my staff, that the Commission has the legal authority if it wants, our discretion is very broad, to lift antitrust immunity to the 1,000 pounds. When you go beyond that, you begin broadening it to perhaps include all immunity, then I think the legal justification becomes more and more tenuous, and my problem with doing it across-the-board for everybody is plain and simply the fact, as I testified over there on the Senate side, that through the Ratemaking Study Commission, it seems to me Congress said this is a matter, if it is going to be ultimately decided across-the-board, antitrust immunity, that we want to do ourselves, and I agree with that.

Mr. SHUSTER. But not through any action of the Commission.

Mr. TAYLOR. No. Through recommendation of the Congress, for Congress to then act upon it.

Mr. SHUSTER. The action must be by the Congress.

Mr. TAYLOR. Correct.

Mr. SHUSTER. And no action by the Study Commission serves to indicate what the will of the Congress is.

Mr. TAYLOR. That is absolutely correct. That is my view.

Mr. SHUSTER. Do you believe that the Commission then has the authority to limit or eliminate the use of Rate Bureaus by the trucking industry other than and specifically provided for in section 14 of the Motor Carrier Act?

Mr. TAYLOR. This is really a difficult question for us to talk about, Congressman Shuster, because we have asked for comments. I cannot discuss the matter in detail.

Mr. SHUSTER. Ms. Gradison is shaking her head yes.

Mr. TAYLOR. In general, I think we have the authority. I think clearly we have the authority insofar as the specific petition that is filed.

Mr. SHUSTER. Then where are the specific provisions of the law that you rely upon for that answer?

Mr. TAYLOR. I would refer you to section 10706 and specifically—let me get the numbers, this involves rate agreements, section 10706(b)(2).

Mr. SHUSTER. What is the language there?

Mr. TAYLOR. It says, as provided by this subsection, a motor common carrier providing transportation or service, subject to the jurisdiction of the Commission, and so on—procedures for joint consideration of initiation or establishment—and such agreement may be submitted to the Commission for approval by any carrier or carriers which are party to such agreement, and shall be approved upon by the Commission upon a finding that the agreement fulfills each requirement of this subsection unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101 of this title. I carefully had our people look at it and, in their opinion, we had the legal authority to do this. It was incumbent upon me to make the determination whether this petition ought to be circulated to the Commission for its views and action to determine whether or not a rulemaking petition should be circulated, and only after being carefully culled by all of our legal beagles, those on my staff and elsewhere in the Commission, that we had the legal authority to do this, at least in this narrow and confined area, was it circulated.

So, therefore, it is my view that we do have that legal authority.

As I said, if we are going to talk about antitrust immunity generally, then I think it becomes more tenuous, and I really am constrained by the fact that Congress intended to take that action itself, and it has reserved that question for congressional action. We have asked for comments in the proceeding, and I do not want to tell you simply because we have the legal authority to do something, I think that clearly is prejudging the case that we in fact are going to do it or not going to do it. We are awaiting comments insofar as the impact is concerned, what the effects will be. And I would even suggest that anybody here on the Hill who feels strongly about that matter should comment, and I would be perfectly happy to have oral arguments on the proposition and have any of you who would like to appear and tell us in our hearing room how you feel about it and why. Because I think it is an important issue and we are trying to do this within the bounds of our legal authority and, at the same time, recognize the overall congressional view that I think with the Ratemaking Study Commission you believe final action on this entire matter should be reserved to Congress. And I concurred with that.

Mr. SHUSTER. It strikes me that turning rally to another more general matter, just as there is quite a divergence of opinion within the industry as to the kinds of a job the ICC is doing, there seems to be quite a divergence within the Commission itself and I wonder, do you Commissioners, do you meet regularly to discuss these matters?

Mr. TAYLOR. We have an open meeting law, Congressman Shuster, which really has precluded—I have just been to a meeting of the Administrative Conference and we had a whole discussion in my particular committee on the sunshine law and have tried very hard to suggest that it really does have a severe impact in my view on the collegiality of a Commission as ours because we ought to be able to meet from time to time.

The answer to your question is we have not met nearly as often as I would like, and I think that is too bad.

Mr. SHUSTER. I see Ms. Gradison shaking her head. I am not sure what that means.

Ms. GRADISON. Communication between the offices, between Commissioner Sterrett's office, Commissioner Andre's office and mine is on a daily basis. Unfortunately, we have very little communication with the Chairman's office, although we do try, there seems to be little outreach from the Chairman's office that to our individual offices. We do make attempts to contact him whenever possible, and he is responsive when we contact him.

Mr. TAYLOR. I guess I better answer that then if we are going to get into that kind of specifics.

Commissioner Gradison does on occasion contact me by telephone. We converse with each other. I have not had any other communications with the other two Commissioners. I think the last time I had a meeting with Commissioner Sterrett was last March. He knows my door is open. He is able to come down whenever he pleases, but they have chosen on many occasions—that was one of the examples that I was going to provide for you, to deal not only with me but with the other staff people through what has become now their common practice of issuing three-Commissioner memorandums. They seem to feel that they have the votes and they can do as they please. So they do not bother to discuss their policy considerations with me. I think that is too bad. They know my door is open. I had a regular series of meetings planned and contemplated with all of their offices, and that was going along quite well until sometime last spring. And then, for some reason or another, come March, it has just stopped. And, as a consequence, I feel badly about the fact.

Mr. SHUSTER. You are all appointed by President Reagan, are you not? Is that right, Mr. Sterrett?

Mr. STERRETT. That is right.

Mr. TAYLOR. We are also all four Republicans. We have waited a long time for additional commissioners.

Ms. GRADISON. And our doors are open also.

Mr. TAYLOR. I do not think it is my job as the Chairman of the agency, when I have the administrative responsibility, to pursue my colleagues, particularly when most of the time their minds have already been made up on these issues. There is no point. Commissioner Andre invariably votes, but for antitrust immunity and on one or two other issues, with Vice Chairman Sterrett, and I must say a good part of the time Commissioner Gradison votes with them as well. Given that kind of combination, it does not behoove me to spend an awful lot of time trying to cut loose one of them just to make a tie. I would appreciate it if they would come down more frequently and they know that invitation is open. They have not seemed to have taken advantage of it, but for Commissioner Gradison, we do have conversations in a very amicable way.

Mr. SHUSTER. It sounds to me that the President should move with dispatch to appoint some responsible Democrats.

Mr. TAYLOR. You are right.

Mr. ANDERSON. It looks like you need some Democrats to get you together.

Mr. SHUSTER. Let me move on to another line of questioning.

Both the industry and the ICC have testified to a sharp increase in the number of motor carriers with operating authority since the enactment of the Motor Carrier Act of 1980.

Is it necessarily a sign of health in the industry for such an increase in the number of motor carriers, particularly when it comes at a time of depressed traffic volume, and a follow-on question to that, is there any point at which excess capacity would warrant restrictions on entry?

Mr. TAYLOR. That goes to the very heart of the whole matter of economic regulation. We now have a law which presumably provides for at least some measure of economic regulation. That goes without saying.

What we have done is to interpret it in such fashion that really protestants never prevail; I cannot remember a case in which one really has.

Now, if you go from there to what should or should not be, it is my own view that really we are there not just to provide for the health and welfare of the motor carrier industry, but to determine somehow or another how we come about achieving the best possible transportation system for the benefit of shippers. And I think Congress determined with the Motor Carrier Act reforms of 1980 that increased competition would lower rates and ultimately give us a better trucking system for the benefit of shippers. And I think that congressional determination at least has been made.

Now, where you draw the line and say too much competition, as the economists used to say years and years ago, that has become an outmoded phrase in this day and age, ruinous competition, I do not know. My own personal feeling is the more competition, the better, and I think that those carriers who really have the wherewithal to survive, who can keep a handle on their efficiency, are going to make it no matter what the environment is. Those carriers that are in trouble and have had difficulties are going to be in difficulty no matter what the environment is. We sat here last year and listened to the ATA run off a whole list of trucking companies that were presumably on the brink of potential disaster. We went back and had a look at some of those companies and what do we find? That they were in difficulty in 1977 and in 1978 and in 1979 before any of this occurred.

On the other hand, there is an operation, and I hate to pick out specific companies, but I went personally to go through this facility, the APA operation in North Bergen, N.J., and they still have an operating ratio down in the eighties because that operator knows exactly how to control his costs. And when those drivers come in the gate, they have 6 minutes to check in, and he knows every single cost in his operation, and he will frankly admit I am going to survive no matter what the regulatory environment is. And I am sure he will.

Those are the kinds of carriers that will survive this shakeout which was intended to occur. Even in the best of economic times, it was never thought that every carrier that was in business under the protectionist umbrella was actually going to make it and survive. I think the efficient ones will, and, to the extent they have good and healthy competition, it seems to me we have a better transportation system and shippers get the benefits.

Mr. SHUSTER. Turning to another matter. The legislative history of the 1980 act can be read as having the intent of curbing the ICC's inclination to deregulate—excuse me, to regulate on its own in the absence of statutory mandates.

For example, the House report stated as follows with respect to the section of the bill dealing with congressional findings:

> In revising the statute, Congress also intends to give the Interstate Commerce Commission explicit direction for the regulation of the motor carrier industry and to ease that industry's uncertainty about the future of regulation by the Commission. The Commission is admonished to stay within the powers specifically vested it by the revised law.

Now, would you please tell the subcommittee how you interpret congressional intent in terms of latitude?

Mr. TAYLOR. I have interpreted that admonition very seriously. As a matter of fact, I made reference to it in my confirmation testimony, some of the answers to the questions I have given. Because I think that was a serious directive from Congress, and once again, as I said before, my own personal feeling about the act is whether you agree with all the provisions or not is unimportant. If there is going to be a change made, Congress has to make it and not us. As I indicated earlier, I think the Commission has not done that. I have dissented and said so strongly. Perhaps my colleagues would like to comment.

Mr. SHUSTER. Would each of the other Commissioners care to respond to my question? Let me say it again.

The House report states the following in the 1980 act:

> In revising the statute, Congress also intends to give the Interstate Commerce Commission explicit direction for the regulation of the motor carrier industry and to ease that industry's uncertainty about the future of regulation by the Commission. The Commission is admonished to stay within the powers specifically vested it by the revised law.

Would you tell the subcommittee how you interpret congressional intent in terms of latitude to be exercised by the Commission in the absence of specific direction?

Ms. GRADISON. The statement is pretty clear. Stay within the law.

Mr. SHUSTER. Mr Andre.

Mr. ANDRE. Yes, it says the revised law, which I would say, also includes then the Interstate Commerce Act in its totality. And second, on that same page, the congressional intent went on to say that the national transportation policy sets the tone for the regulatory structure and is the basis for determining the meaning of statutory provisions. And the national——

Mr. SHUSTER. Yes, I think we started out this discussion this morning by referring to that national transportation policy and acknowledging that while it calls for competition, it also calls for many other goals and aspects.

Mr. **Andre**. Right. But——

Mr. **Shuster**. And the charge against the Commission has been that the Commission has not acted in such a way to present a balanced policy, but has given undue weight to a part of that transportation policy, the part that deals with increased competition.

Do you agree with that, Mr. Andre?

Mr. **Andre**. Yes. Perhaps should we say the preamble or the preface to the A through H points that were incorporated in the transportation policy by virtue of the Motor Carrier Act in conjunction with what I have just read, it says to promote competition and efficiency and it does not say, for instance, to allow competition and efficiency. It says to actively and overtly promote, and that is how I have been interpreting it.

Mr. **Shuster**. Are those the only two goals which would be promoted according to the national transportation policy? Competition and efficiency?

Mr. **Andre**. It says in this section 4——

Mr. **Shuster**. Is not safety a goal also?

Mr. **Andre**. Yes. But I interpret section 4 here as referring to promoting competitive and efficient transportation, and encouraging price and service options. Then there is a clause referring to the fact that this is to be the interpretative principle for all the A through H.

Mr. **Shuster**. 101011(b) says to promote safe, adequate economical and efficient transportation. Is that not part of the national transportation policy?

Mr. **Andre**. It most certainly is I think the congressional intent clearly indicates that even that is to be interpreted within the framework of to promote competition and efficiency.

Mr. **Shuster**. So that you are saying that safety is subservient to competition and efficiency?

Mr. **Andre**. No. I am just saying that is what I understand the congressional intent to be.

Mr. **Shuster**. You understand the congressional intent to be that safety is subservient to competition and efficiency, is that what you are saying?

Mr. **Andre**. I certainly do not personally regard it that way, nor do I think that the two are necessarily in conflict with each other. As a matter of fact, it is my understanding that in the motor carrier industry the chief promoters of safety are actually the insurance companies whose highway safety inspectors provide a hardnosed moment to moment keeping track of truck safety.

Mr. **Shuster**. Yes, I have before me the law, and 10101 transportation policy which lists under (a)(1) the various matters to be considered in regulating these modes, and because there is a section 2 which refers to promoting competitive and efficient transportation, you are not saying that that point 2 in any way diminishes the objective set up in point 1, are you?

Mr. **Andre**. No, no. As a matter of fact, I agree with you.

Mr. **Shuster**. They have very sound economic conditions in transportation.

Mr. **Andre**. Right.

Mr. SHUSTER. Are you saying that to somehow promote competition, takes priority over encouraging sound economic conditions in transportation in terms of transportation goals? Are you suggesting that encouraging competition somehow must be given greater weight than encouraging sound economic conditions?

Mr. ANDRE. No. And I do not see where there is a necessary conflict between the two.

Mr. SHUSTER. So you are agreeing that there must be a balance among these various goals?

Mr. ANDRE That is correct. And I would go on to say further that having come from the trucking industry, having some industry experience as an owner operator that the most effective and efficient means of promoting safety in the industry is done by promoting private sector competition and efficiency because the most effective safety measures are taken by the people who are out there checking for the insurance companies. And that puts the greatest fear into a driver, I can attest to that from my own experience.

Mr. SHUSTER Does intense price competition tend to promote safety?

Mr. ANDRE. Yes.

Mr. SHUSTER How so?

Mr. ANDRE. Because it brings the driver even closer, if we are talking about owner-operators, it brings them even closer to the economic realities of maintaining his vehicle insurance intact and personally keeping the premium down. The frequency with which the insurance companies produce reports——

Mr. SHUSTER. Does not intense price competition, particularly among owner-operators, tend to cause them to work long hours? We have had much testimony to that.

Mr. ANDRE. That is correct. But merely the price conscious——

Mr. SHUSTER. Does it not also cause them to defer maintenance?

Mr. ANDRE. Not necessarily, no. It is not in their own interest to do so.

Mr. SHUSTER. It does not cause it? We have had much testimony that they defer maintenance when they are faced with intensive price competition, when they have to reduce their prices. They do not have enough money to pay for the kind of maintenance they would like to give their rigs. Do you disagree with that?

Mr. ANDRE. I did not hear the last part.

Mr. SHUSTER. You disagree with that, that intense price competition, the reduction of prices does not bring pressure to bear which causes some owner-operators in particular to defer their maintenance? Is it not logical that if you have fewer dollars coming in——

Mr. ANDRE. That means that much less money available to pay the insurance premiums, and the quickest way to get one's insurance bill to go up is to get some bad reports from an insurance inspector concerning one's behavior on the highway. That is a primary limiting factor with respect to safety.

Mr. SHUSTER. Do you deny that we have had much testimony that says reduced prices bring about deferred maintenance? Apparently you are disagreeing with the facts?

Mr. ANDRE. No; I do not dispute that there has been testimony to that effect.

Mr. SHUSTER. There has been testimony to that effect?

Mr. **Andre**. Yes.

Mr. **Shuster**. So you have a difference of opinion. You take exception to that testimony that we have had and you say that reduced prices, reduced income does not cause deferred maintenance, is that your testimony?

Mr. **Andre**. I think it is an arguable proposition.

Mr. **Shuster**. Thank you. That is all I have for now.

Mr. **Taylor**. Congressman Shuster, since you brought up the matter of safety, which is really essentially a matter of concern for the Department of Transportation, and it is only important to us insofar as licensing is concerned, and there is another fitness case, which as far as I am concerned, is just as outrageous as the *Wilkett* case, which if we could, we would like to make some reference for the record.

That case is one that involves Mr. Alan B. Robbins, doing business as Robbins Trailer Service, and MC-160342. The decision affirmed an Administrative Law Judge's decision granting the applicant a 15 month, note that, a limited-term certificate, to transport construction and roadbuilding machinery and equipment.

Now, both our own Office of Compliance and Consumer Assistance, which Director McFarland heads, and the Department of Transportation opposed this application, vehemently. Let me tell you a little bit about what they told us.

OCCA, our compliance and consumer assistance crew, demonstrated that the applicant had repeatedly engaged in unlawful operations, continually violated U.S. court injunctions, and that it has been fined on several occasions. DOT demonstrated that the applicant has been in total noncompliance with various recordkeeping requirements, specifically failure to maintain driver qualification files, driver daily logs, vehicle condition reports, and reporting of accidents.

DOT conducted three safety audits in 1978, 1981, and in 1982, which disclosed, respectively, 48, 21, and 18 violations, and DOT has placed out of service as eminently hazardous, note those words, eminently hazardous, at least two of the applicant's vehicles, and uncovered over 30 violations at roadside vehicle inspections.

I submit to you, for the Commission, to have found on February 23, 1983, that this particular applicant was fit, is nothing less than outrageous. The vote was Sterrett, Andre, Gradison for a limited term.

Now, what limiting the term does to help the situation, I do not know. The statute does not make any distinction between a limited-term certificate and a full-term certificate.

As I pointed out in my dissent, since there is no evidence which would have demonstrated that the applicant has corrected its past violations, the applicant is just as unfit to receive an unlimited-term certificate as it is a limited-term certificate, and you cannot make any distinctions.

The Department of Transportation feels so strongly about that case that they have appealed the Commission's decision in the District of Columbia Circuit Court of Appeals. It being the DOT contention that the ICC erred in the granting of the certificate, in view of the applicant's unsatisfactory safety record. And in view of your concern about the safety provisions in the act, I think it is quite interesting to keep this case in mind.

So that is what the Commission did on a safety fitness matter, in a really blatant situation.

Mr. SHUSTER. You are saying in the past several months, in the cases that you have referred to here, with regard to granting certificates, the ICC has disregarded safety, has disregarded fitness with regard to a convicted felon, and so questions of safety and fitness seem to be irrelevant to the ICC?

Mr. TAYLOR. They are not irrelevant to me.

Mr. SHUSTER. I am saying to the Commission as a whole.

Anybody else care to comment?

Mr. STERRETT. I do not recall the facts of the *Robbins* case, I would be happy to get back to you, and explain my action on the case. However, I just do not recall it at the moment.

I would point out, however, that that is merely one case out of, I do not know how many. The *Wilkett* case is clearly a unique, I hope, a unique situation.

Mr. SHUSTER. This was apparently this company's concern about this insurance, Mr. Andre, apparently, you said a carrier's concern for his insurance motivates him to make his rigs safe. Apparently this particular carrier was not so motivated, or indeed, would there be any insurance penalty imposed upon this kind of a carrier. He would be able to get insurance without a problem.

Mr. ANDRE. That is questionable, perhaps, but certainly if he had a bad safety record, as diagnosed by the insurance inspectors, his rate would go up considerably, on the basis of reports that are regularly filed. They are out there on the highways, observing more than the ICC people are observing. They are out there observing far more than the DOT people are observing.

The effective safety controls in the country today, and I speak as an ex-owner-operator, overwhelmingly it is the private sector insurance investigator that puts the fear into the owner-operator.

Mr. SHUSTER. So apparently that fear was not enough to motivate this particular carrier to provide safe rigs.

Ms. GRADISON. Congressman, we vote on over 1,600 cases a year, those of us who serve on Divisions, and while, as Vice Chairman Sterrett said, I, too, do not remember the specifics of that particular case, I would be happy to supply them for the record.

Mr. SHUSTER. Yes, I would ask unanimous consent, Mr. Chairman.

Mr. ANDERSON. There being no objection—Ms. Gradison, would you please submit them for the record?

Ms. GRADISON. Yes.

[The following was received for the record from Ms. Gradison:]

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., December 8, 1983.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Surface Transportation, House Public Works and Transportation Committee, Washington, D.C.

Dear Mr. Chairman: As requested, I am submitting the attached "brief history" and appendices with respect to ICC proceeding No. MC-160342—the "Robbins" case—to supplement the record. The attachments explain my reasons for voting as I did in this case.

If I can be of further assistance please let me know.

Sincerely,

Heather J. Gradison, *Commissioner.*

Attachments.

Brief History of No. MC-160342—Allan B. Robbins, d.b.a. Robbins Trailer Service, Common Carrier Application

ICC Administrative Law Judge Nolin Bilodeau held an oral hearing at Springfield, MA, on September 14 and 15, 1982. Appearances were made in behalf of the applicant, the Federal Highway Administration of the U.S. Department of Transportation (DOT) and the ICC's Office of Compliance and Consumer Assistance (OCCA). By decision served October 19, 1982, the ALJ found that the applicant, who had held no interstate operating authority prior to that time, should be given an opportunity to prove that he can abide by the pertinent rules and regulations governing interstate transportation despite a history of unauthorized operations and "terrible" recordkeeping and paperwork. The Judge granted the application but limited the applicant's certificate to a 15 month term. Under the limitation, the applicant's certificate will expire 15 months from the date of issuance unless the applicant, several months prior to expiration of the certificate, files a petition for extension and demonstrates that it has been in full compliance with the terms and conditions of the certificate, with the requirements of the law and with all applicable rules and regulations of the ICC and the Federal Highway Administration of DOT. (See Appendix A.)

DOT and OCCA appealed the Judge's decision. In December, 1982, staff attorneys in the Commission's Office of Proceedings recommended to the (then) members of Appellate Division 2 (Commissioners Andre, Gilliam and Taylor) that the ALJ's decision be affirmed but modified to reinsert "commodities in bulk" that had been excluded in the ALJ's grant of authority. Vice Chairman Gilliam voted to modify the Office of Proceedings' draft decision to provide for a nine month rather than a 15 month limited term certificate. Chairman Taylor voted to reject the draft decision and to find the applicant unfit. Commissioner Andre voted to approve the Office of Proceedings' draft decision and further to certify the case to the entire Commission since there was no agreement at the Division level. A majority of Appellate Division 2 agreed to certify and on January 24, 1983, the proceeding (including the Proceedings draft decision, earlier votes and the record) was circulated to the remainder of the Commission (i.e., Vice Chairman Sterrett—who had become Vice Chairman at the beginning of 1983, Commissioner Simmons and myself.)

On January 26, 1983, Commissioner Andre reaffirmed his earlier vote to approve the draft. On January 31, 1983, Vice Chairman Sterrett, Commissioner Simmons and I cast our votes. Commissioner Simmons voted to reject the draft and to find the applicant unfit. Vice Chairman Sterrett and I voted to approve the draft decision but proposed separate modifications to the draft. [I am attaching a copy of my vote as Appendix B. The vote gives reasons for my position.] On February 1, 1983, Chairman Taylor reaffirmed his prior vote to reject. Commissioner Gilliam, who was about to resign from the Commission, did not participate in voting at this point. My changes and Vice Chairman Sterrett's changes were adopted and the decision was served on February 23, 1983. (See Appendix C.)

Subsequently, on March 15, 1983, protestant Port Norris Express Co., Inc. filed a Petition for Administrative Review which focused on the issue of inclusion of "bulk commodities" in the grant of authority. This "discretionary" appeal was denied with Chairman Taylor dissenting. (See Appendix D.)

OH/ID

Appendix A

SERVICE DATE
OCT 19 1982

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-160342

ALLAN B. ROBBINS, dba ROBBINS TRAILER SERVICE
COMMON CARRIER APPLICATION
(Monson, MA)

Decided: October 13, 1982

By an application filed March 23, 1982, applicant seeks a certificate authorizing the operations set out in the appendix. A Review Board No. 1 Decision-Notice published in the Federal Register on April 14, 1982, preliminarily found applicant fit and a need for the proposed service. A protest was filed by a motor carrier but was subsequently withdrawn. An order of Division 2, May 25, 1982, (served June 1, 1982), indicated that the Commission's Office of Compliance and Consumer Assistance (OCCA) had raised questions concerning applicant's fitness (specifically detailed in the order) and directed that the matter be assigned to an oral hearing to pursue the fitness issue, with OCCA to participate as a party to develop the record. The Federal Highway Administration of the Department of Transportation (DOT) was permitted to intervene on safety matters by order of July 19, 1982.

This proceeding was assigned to me and a hearing was held at Springfield, MA on September 14 and 15, 1982. Appearances were made on behalf of applicant, OCCA, and DOT.

Applicant (Mr. Robbins), in his verified statement filed with the application, acknowledges that he has had operating rights problems with the Commission's enforcement personnel, culminating in court and other type penalties.[1] He holds no interstate operating authority yet has been providing both intra and interstate service for many years. He also buys and sells construction equipment and heavy machinery for his own account, and in connection with such, has picked up and delivered these commodities throughout the country. He has served most of the supporting shippers and as to interstate operations did so under buy-sell arrangements and directly for other carriers as well as an owner-operator. Because of difficulties attendant to owner-operator activities, he prefers to serve his shippers as an authorized carrier.

Applicant, an an independent soul, has believed service comes first for its customers and initially felt it unconstitutional for the government to prevent his operating in the manner he chose. He admits to the 1970 court action, again to the $2,500 fine in 1978(?), believing that a small carrier should not be harassed for providing responsive service to the shipping public. Since he has been service-motivated he did at times take the easier of paths when circumstances warranted. He believed that once lessened regulation ensued from the Motor Carrier Act of 1980 carriers such as himself would not be burdened by regulatory restraints. He was wrong since he was subjected to court and Commission action in 1981 and a negotiated payment of $4,000 fine ostensibly to wipe the slate clean. He feels he has been singled out for punitive action needlessly. All he wants to do is serve his customers. If a certificate is awarded, he will comply with the law and the Commission's rules. Denial of the application will not only impede his ability to provide service but will greatly inconvenience the many shippers which have come to rely upon him for his specialized unique service. Applicant indicates he is familiar with the safety requirements "in general" including those of DOT.

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[1] See recitation of items under Fitness heading below.

The Need Aspect:

Twenty-three shippers submitted very strong Certifications of Shipper Support with this application. Their commodity and territorial needs are consistent with the scope of the application. Data given on shipments to be tendered. All are familiar with applicant's service, some having used it from a few to as many as thirty years. Many are aware that applicant has been having difficulties from a regulatory standpoint but feel his most excellent service in the past deserves recognition here by allowing him to obtain a certificate. Where other carriers have failed them, applicant has been able to respond and perform as desired by shippers. In this climate of lessened regulation of motor carriage, applicant's specialized service should be made available on a certificated basis. This would eliminate the problems applicant has had in trying to accommodate shippers by use of leases or other mechanisms which have failed to pass muster with regulating authorities.

Hearing Matters:

At the outset of the hearing, applicant's counsel took the position that inasmuch as there had already been a finding of fitness (the Decision-Notice of April 14, 1982), applicant was not obliged to present additional direct evidence. Accordingly, the only witnesses were those sponsored by OCCA and DOT.

Fitness Issue:

OCCA

Documents received in evidence as well as testimony by OCCA's only witness reflect the following as to applicant's difficulties with the Commission and courts:

1969 - U.S. District Court (MA) action brought by OCCA's predecessor organization resulted in default judgment of $2,500 against applicant for interstate transportation of regulated commodities without proper authority.

1970 - Permanent injunction issued by U.S. District Court (MA) against applicant performing any operations requiring Commission authority unless he holds same. Further required applicant to permit duly authorized Commission personnel access to books and records to determine compliance with the injunction.

1972 - U.S. District Court (MA) action brought by OCCA's predecessor resulted in a fine of $200 for criminal contempt of court for violating the 1970 injunction.

1978 - U.S. District Court (MA) action brought by OCCA's predecessor resulted in a fine of $2,500 against applicant for criminal contempt for illegal operations (pled guilty).

1981 - In May, OCCA made an on-site inspection of applicant's records which revealed instances of interstate transportation. Upon query as to these, applicant indicated same were transported on behalf of a named carrier or were leased movements. OCCA testimony revealed that such cited carrier does not hold appropriate authority nor were lease conditions met.

June 10, OCCA representative denied access to applicant's records even though demand letter presented at time made specific reference to the 1970 permanent injunction directing applicant to allow Commission access to applicant's records, etc. On June 17, 1981, again OCCA was denied access to applicant's records.

On July 31, based upon data obtained during the May record inspection, contact with other businesses and the State of Vermont, and referencing the June 1981 access denials, the responsible OCCA representative signed an affidavit, preparatory to court action, alleging improper activities.

On September 16, applicant stipulated with OCCA that he did for the prior three years conduct interstate operations without appropriate authority in violation of the 1970 injunction.

October 27, a Massachusetts road check revealed applicant's vehicle on the way to an interstate destination for which there was no discernible underlying authority.

On November 19, 1981, the U.S. District Court (MA) amended the 1970 injunction and considering the applicant's stipulation and other data found applicant in contempt for performing unauthorized transportation and for dening OCCA access to records on June 10 and 17, 1981. The court order directed applicant to provide for a period of five years complete quarterly records, sworn to, of all shipments handled. OCCA access to premises for record inspection was reiterated.

November 19, a road check in Massachusetts revealed applicant engaged in a foreign commerce movement.

1982 - On February 1, applicant was due to file his first quarterly report pursuant to the amended injunction of November 19, 1981. He did not meet the deadline. Advised of the lapse by an OCCA letter of February 2nd, applicant submitted imcomplete date, not sworn to, on February 16th. Instances of unauthorized transportation were uncovered which applicant indicated were handled either on behalf of another carrier or via lease arrangements - neither of which was verified by applicant. On April 13th when OCCA personnel returned the incomplete data to applicant, the latter made a disparaging remark as to validity of the November 19, 1981, amended injunction which prescribed the quarterly submittal of records by applicant to the Commission.

> As a companion event to the November 19, 1981, court action, and after negotiation, on February 26, applicant, having signed an agreement of settlement respecting improper activities between February 1 and October 30, 1981, paid a penalty of $4,000 to terminate civil forfeiture claims made by OCCA against him.
>
> On May 14 and 17, applicant was advised by OCCA that the second quarterly statement was overdue. That, as well as the third quarterly statement due August 1, 1982, were not submitted by applicant.
>
> In July 1982, OCCA, by contacting Vermont authorites, found 10 instances in the first quarter of 1982 where applicant had been issued special permits to pass through that State.

DOT - Safety:

DOT's initial safety survey of applicant was conducted during July 1978. The survey report indicated numerous violations of DOT recordkeeping requirements. Voids included no appropriate files or data on driver qualifications, driver vehicular violation review (annual), driver logs, inspection and maintenance records, and daily vehicular condition reports. (There were no reportable accidents found.) The conclusion of the DOT inspector who conducted the survey was that applicant exhibited a general pattern of non-compliance. Applicant was advised directly of the violations and said he would remedy the situation. Violations were not considered serious enough for DOT to commence enforcement action. Another safety survey was conducted on June 17, 1981, at which time recordkeeping violations were noted similar to those noted in 1978. An accident in Tennessee on which no report was filed by applicant prompted this survey which also discovered another accident in Pennsylvania[2] which likewise had not been reported by Mr. Robbins. When confronted with the results of survey, he admitted the recordkeeping deficiencies and ignorance of the accident reporting requirement. Subsequent attempts in late June and early July 1981, to have applicant produce photostats of certain documents were unsuccessful due to unavailability of Mr. Robbins. A further safety survey was made in May and June 1982, with only very minimal improvement noted in recordkeeping. Instances of interstate movements when investigated did not reveal that applicant had handled same under appropriate rights. Witness indicated he recommended enforcement action by DOT but there is no record evidence of such being pursued.

Two vehicle inspections in 1981 and one in 1982 revealed several violations, mainly lack of driver medical certificates, as required. All three occasions concerned interstate movements. Only the 1982 inspection resulted in placing a unit out of service and then only for a very short period of time. When queried about applicant's equipment generally, the DOT witness characterized such as "passing." A former driver for applicant testified he was the driver of unit involved in the Tennessee accident in 1981 and that he lacked many of the papers required by DOT regulations. He indicated that applicant was aware of the situation. About 50 percent of his trips were interstate in nature.

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[2] On this record, there is no clear evidence that applicant company was at fault in either accident.

At the conclusion of the DOT presentation, applicant's counsel submitted and had received into evidence: (a) a copy of the Federal Register for April 14, 1982, setting out the preliminary finding of fitness of applicant; (b) a copy of a Commission order denying applicant's request for temporary authority, served March 8, 1982, which cited no need was established for service, DOT's report that applicant was not in safety compliance, and that the question of applicant's fitness had surfaced; and (c) a letter of July 29, 1982, from DOT to applicant stating the latter was now in compliance with 49 CFR 391.11 of the safety regulations. A prior letter of disqualification based upon that section was rescinded. (The cited section pertains to the qualification of drivers.)

In lieu of briefs, counsel for the parties presented a short oral argument of respective positions. Counsel for OCCA and DOT stressed the record showing of applicant's continuing and long time failure to abide by lawful regulation. Applicant's counsel emphasized that while applicant's safety recordkeeping was terrible, the fact remains that its actual safety record was exemplary with only two recorded accidents (non-chargeable) in 25 years and with no DOT enforcement action ever being filed against him. Concededly, applicant's episodes with the Commission and courts are not excusable but consideration should be given to the man's strong feeling that he had a constitutional right to operate unimpeded by governmental red tape. It was urged that to give applicant a chance to demonstrate a belated willingness to abide by lawful regulation, he should at least be awarded a two-year term certificate during which time appropriate bodies could monitor his activities.

Discussion and Conclusions:

This application is totally unopposed from a commercial or competitive standpoint. Its support comes from 23 shippers whose statements are very strong and positive on the need for applicant's service. All are familiar with applicant and most have been using applicant in some fashion. The record does not provide any true insight with respect to the exact mechanism by which these shippers were served interstate by applicant. There is some limited reference to leasing and other concepts of interstate transportation but there is no way to assess the validity of the service given particular shippers. Suffice to say shippers would be most satisfied to have applicant's service made available in a certificated manner so they can continue to obtain the responsive service consistently received in the past. There is no doubt that applicant to these shippers, dealing as they do in commodities which require specialized equipment or handling, is viewed with considerable respect as a highly efficient and proficient transportation medium. Existing carriers' service has not been able to measure up to applicant's standard of excellence. The lack of any carrier opposition would appear to give credence to shippers' statements that applicant alone has been able to meet their needs in the manner they demand. There is substantial evidence that performance by applicant of the service proposed will certainly serve a useful purpose, responsive to a sizable public demand coupled with real need.

Having concluded that a need has been established for applicant's proposed service, attention must now be directed to the question of whether applicant is fit to obtain and operate under certificated authority. At the outset, it must be recognized that, contrary to applicant's view (counsel), the burden of establishing fitness rests clearly upon the applicant. Kroblin Refrigerated Xpress, Inc. v. United States, 197 F. Supp. 39, 47 (N.D. Iowa, 1961). When the Commission's Office of Consumer Protection challenges a carrier's fitness, the latter's burden does not shift since it is the proponent of an order which requires a finding of fitness to be made. *St. Johnsbury Trucking v. United States*, 326 F. Supp. 938 (D.C. VT, (1971); *Radke Extension - Various Commodities*, 113 M.C.C. 89, 95 (1971); and *Eagle Motor Lines, Inc., Ext. - Lincoln, Ala.*, 107 M.C.C. 499, 502-3 (1968). Applicant's reliance upon the Review Board's Decision-Notice in the Federal Register of April 14, 1982, as establishing applicant's fitness is misplaced. The Decision-Notice process is not a definitive and conclusive evaluation of an applicant's fitness but merely a tentative one subject to attack. All it represents is the presumptive record analysis of an applicant's bare verified statement before any party has had an opportunity to challenge it. The Federal Register of April 14, 1982, itself indicated that such "presumption shall not be deemed to exist where the application was opposed." The application was duly opposed by Port Norris Express, Co., Inc., with such opposition withdrawn effective June 21, 1982. However, also, during the protest period of 45 days and when Port Norris' protest was in effect Division 2 by its order of May 25, 1982 (served June 1, 1982), decided that CCCA's allegations on fitness warranted an oral hearing on the point. Accordingly, any presumption of fitness from the Decision-Notice process was negated. The burden of establishing his fitness remained with applicant.

In determining whether an applicant has met this burden, consideration must be given to (1) the nature and extent of its violations (2) the mitigating circumstances, if any, shown to exist or to have existed, (3) whether the carrier's conduct represents a flagrant and persistent disregard of the provisions of the statute and the Commission's rules and regulations, (4) whether the applicant has made a sincere effort to correct its past mistakes, and (5) whether it demonstrates its ability to comport in the future with the applicable statute, rules and regulations of this Commission. *Transamerican Freight Lines, Inc., Ext - Columbus, GA*, 131 M.C.C. 640, 644-645 (1979), and *Distributors Service Co., Extension - Foods*, 118 M.C.C. 322, 329 (1973). Each proceeding must be determined on the basis of its own particular facts and circumstances. *Miller Transfer and Rigging Co., Ext. - Metal Lathes*, 125 M.C.C. 536, 544 (1976), and *L & N Express Co., Extension - Crewe, Va.*, 106 M.C.C. 334, 338 (1968).

An inquiry into a carrier's fitness is prospective in nature having as its primary purpose the protection of the shipping public from a carrier with a negative compliance disposition. It is not the Commission's policy in determining fitness to punish a carrier for past wrongs. While appropriate weight should be given to past violations, even a record of knowing and willful past violations is no bar to a finding of fitness. *Barrett Mobile Home Transportation, Inc., Ext. - Bldgs.*, 126 M.C.C. 73 (1977), and *Armored Carrier Corporation v. United States*, 260 F. Supp. 612 (E.D.N.Y. 1966), affirmed per curiam, 386 U.S. 778 (1967). Fitness determinations should not degenerate into an inquisitional ordeal whose sole aim is to exact retribution for past unauthorized operations. Rather, the determination of fitness involves an evaluation of applicant's willingness and ability to correct past mistakes and to conduct future operations in a lawful manner. An applicant's attempt to conform to the Act and the Commission's regulations and a sincere effort to perform only lawful motor carrier operations can outweigh its prior unlawful conduct. *Pre-Fab Transit Co., Ext. - International Falls*, 112 M.C.C. 664 (1970). With these and other considerations in mind, the evidence is discussed below.

In the matter of safety pursued by DOT personnel at the hearing, two rather important conclusions can be drawn from the evidence. First, applicant concededly and definitely has in general not abided by the DOT recordkeeping requirements. Some improvement was noted, however, when DOT advised applicant by letter July 29, 1981, that at least his lapse respecting records on driver qualifications was corrected. The other conclusion is that from a vehicular examination perspective, nothing very serious was ever uncovered. The only recorded instance of DOT placing a unit out-of-service was apparently related to a lighting problem of very short duration. The two accidents in which applicant's units were involved were not chargeable to his company and were adequately explained. No other accidents are of record for applicant. While ignoring recordkeeping requirements is surely serious, their purpose is to ensure that carriers operate in a safe manner. Nothing on this record shows that applicant over the years has operated as anything but a safe over-the-road operator.

The evidence adduced by the DOT witnesses, with the exception of the out-of-service incident, relates to technical paper violations. Indeed, while DOT intervened in this proceeding to establish applicant's unfitness from a safety standpoint, no evidence whatever wa adduced that DOT actually initated any official enforcement action against applicant - this is in face of assertions that on safety surveys in 1978 and 1981, applicant's required recordkeeping was non-existent. Applicant's cavalier and disdainful attitude toward recordkeeping is deplorable. But, it is difficult for the Judge to conclude that applicant is an unsafe operator given no concrete showing of serious over-the-road performance problems in 25 to 30 years of intra-interstate movements of one type or another in an area of motor transportation which deals with specialized problems attendant to the heavy hauling business. The Judge considers the technical paper work violations not of sufficient gravity to warrant a totally negative fitness finding, particularly in light of the strong showing of public need for his service.

There can be no doubt after reviewing the OCCA evidence that applicant has operated unlawfully over a long period of time with consequent enforcement actions (fines) and court decisions unfavorable to him. What can be drawn from the applicant's verified statement, as somewhat explained by counsel during oral argument, is that the applicant, Mr. Robbins, has been an anti-regulation minded individual who resented governmental interference in his transportation activities. The latter were designed to meet shipper needs and applicant obviously felt that shipper considerations were more important than worrying about paper work, or under what theory of operating rights he moved his units from and to interstate destinations. (There is no evidence that he ran afoul of any intrastate rules, etc.) The previous recitation of operating rights difficulties, violations of court injunction, and all the associated matters leave one with the impression that applicant thought he could outlast the Commission's enforcement personnel as well avoiding the real consequences of court orders. He was wrong on both. He has had to admit violations and most recently paid a negotiated $4,000 penalty supposedly to wipe the slate clean. However, the slate is still cluttered with instances in mid-1982 failure to conform to the terms of the November 19, 1981 court order respecting quarterly reports to be submitted with complete details, such to be sworn to.

Possibly applicant is coming around to accepting the realities of lawful regulation, although on this record his good faith efforts to comply are held up on a very slim, weak reed. Applicant has far from passed the usual five criteria to be considered in assessing fitness. See *Transamerican Freight*, *supra*. A denial on fitness would seem to be in order. Yet, there are interest balancing aspects of this proceeding which lead the Judge to conclude that a very limited term certificate is warranted. There is evidence that 23 shippers want and need applicant's service. All but a few have been using him for many years, during which he has performed admirably for them. They need a specialized carrier and he has met their requirements. There is no carrier of record in opposition. This certainly indicates no interest on the part of anyone else to provide the proposed service. A denial not only would continue to place applicant at odds with regulation but more importantly would deprive the many shippers of the services of a carrier known to be proficient, in absence of any comparable existing service ready to fill the void. Denial would leave shippers without adequate service. In such situations, the Commission, on rare occasions, has granted authority even in the face of applicant misdeeds. See Western Auto Transports, Inc., Extension - Trucks, 81 M.C.C. 71 (1959), in which the Commission stated that where there is no showing of available adequate service, it did not want to penalize the shipper for applicant's unauthorized operations. A similar view was expressed in Alaska Truck Transport, Inc., Extension - Alaska, 99 M.C.C. 668 (1965),1/ where the Commission in making a partial grant had this to say at sheets 676-77:

> We cannot condone unauthorized operations. They threaten the entire system of ordered regulation for which we are responsible, and they reward unscrupulous operators at the expense of those which seek to stay within the framework of their authority. At all times our view of unauthorized operations must entail a careful consideration of the specific facts involved. We do not wish to further enhance the illegitimate reward of unauthorized operations by a grant of authority to the unscrupulous. However, at the same time we will not utilize a denial of authority as a punitive measure directed against an applicant. Nor do we wish, if it is reasonably avoidable, to prevent an applicant from conducting (or continuing) operations when such are shown to be needed by the public, whose interest must remain paramount. Of course, when several competitive applications are before us, unauthorized operations are a valid consideration for selection of carrier.

The Judge believes a somewhat similar disposition should be made in this proceeding which is not opposed by any carrier. A denial would unfairly punish shippers which would be left without any known carrier ready to fulfill their transportation needs.

Applicant's verified statement taken in its very best light evinces an intent through this proceeding to operate as a regulated carrier. Whether applicant will sincerely abide by the rules and regulations attendant to such status, including safety matters, cannot be established with any certitude, given applicant's past track record. However, with the public need factor weighing so heavily in favor of a grant, the applicant should be given the opportunity to operate as authorized common carrier at least for a very short term period. This will accomplish two things. It will allow applicant to operate observably within a lawful framework providing a clearly needed service, and it will give him the responsibility of proving he can abide by the rules and regulations governing interstate

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1/ This decision was reversed in part and remanded to the Commission in Lynden Transfer, Inc. v. United States, 263 F. Supp. 336 (1967). The court held that applicant's evidence showing past shipments moved without appropriate authority could not be used to establish a public need base for a grant of household goods in Alaska. The Judge believes there is a significant difference and distinction between the remand situation and that existing here. In this proceeding, while the many shippers have used applicant, there was no clear showing that collectively they were served in an unlawful fashion.

transportation. No useful or significant public purpose would be served in denying summarily this application, given the particular and peculiar circumstances surrounding this proceeding.

A 15-month term certificate is appropriate here. The grant and condition will be so phrased that applicant must seek elimination of the term limitation three months before expiration. This will afford OCCA and DOT personnel the time to make an assessment of applicant's first 12 months of operation to determine if, in fact, applicant has changed his former unyielding posture and reformed by adherence to lawful requirements. Furthermore, such assessment should establish once and for all if during such trial or probationary time applicant is truly fit to continue to have Federal authority to operate. Applicant is advised that personnel of both OCCA and DOT should be consulted routinely to assure proper compliance with respective requirements. A change of attitude is most important. Paperwork, while sometimes onerous, is the obligation one accepts when denominated a common carrier in interstate commerce or operating interstate under some other lawful mechanism. Whether the conditional fitness finding here leads to an unconditional fitness decision in the future rests in applicant's hands.

The Judge finds:

Performance by applicant of the service described in the appendix will serve a useful public purpose, responsive to a public demand or need. Applicant is conditionally fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. This action will not significantly affect either the quality of the human environment or conservation of energy resources. An appropriate 15-month limited term certificate should be granted.

It is ordered:

The application is granted to the extent set forth in the appendix. Operations may begin only following the service of a certificate and upon compliance with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

By the Commission, Nolin J. Bilodeau, Administrative Law Judge.

(SEAL)

AGATHA L. MERGENOVICH
Secretary

No. MC-160342

APPENDIX

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting construction and road-building equipment and machinery and related materials and supplies, (except commodities in bulk), between points in CT, MD, MA, NH, NJ, NY, PA, RI, and VT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Condition: The certificate authorized to be issued herein will expire at the end of a 15-month period unless 3 months prior to its expiration date, applicant files a petition for extension of said certificate and demonstrates that it has been in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and the rules and regulations thereunder and the applicable rules and regulations of the Federal Highway Administration of the Department of Transportation.

Appendix B

OFFICE OF COMMISSIONER GRADISON

NO. MC-160342

ALLAN B. ROBBINS, D/B/A ROBBINS TRAILER SERVICE, COMMON
CARRIER APPLICATION
(Momson, MA)

January 31, 1983

MEMORANDUM TO CHAIRMAN TAYLOR:

While I am concerned about the applicant's past actions which cast some doubt on his willingness to follow the law and the pertinent rules of the ICC and DOT, I agree with the ALJ that he should be given an opportunity to operate within the law. Issuance of a 15 month limited term certificate should serve both as an inducement and as an opportunity for the applicant to prove himself capable of following the rules.

Accordingly, I vote to approve the draft decision with the following change:

Page 1, second paragraph, change the last sentence to read:

> "We believe that it is within the province
> of OCCA and DOT, as parties to a proceeding,
> to take a position on a carrier's fitness."

Heather J. Gradison

Heather J. Gradison

cc: All Commissioners
Clearance Unit
Deputy Director Sporn

Appendix C

SERVICE DATE
FEB 23 1983

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INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-160342

ALLAN B. ROBBINS, d/b/a ROBBINS TRAILER SERVICE,
COMMON CARRIER APPLICATION
(Monson, MA)

Decided: February 1, 1983

We have considered the application and the record in this proceeding, including the initial decision of the Administrative Law Judge, the appeals of the Interstate Commerce Commission's Office of Compliance and Consumer Assistance (OCCA) and the Department of Transportation's Federal Highway Administration (DOT), and the reply by applicant, embracing a motion to strike the appeals. [1]

Applicant moves to strike the appeals on the grounds that neither appellant has proper standing to file an appeal. Applicant argues that both OCCA and DOT were permitted to appear in this proceeding not as adversaries, but, rather, as parties obliged to develop the record with respect to the issue of fitness. The motion will be denied. We believe that it is within the province of OCCA and DOT, as parties to a proceeding, to take a position on a carrier's fitness.

In its appeal, OCCA argues that there is no substantial evidence to support the conclusion of the Administrative Law Judge that applicant will comply with regulation in the future. OCCA asserts that applicant has demonstrated a total lack of respect for any government involvement in his business and that he continues to violate injunctions in the belief that fines are merely a cost of doing business. OCCA contends that applicant has demonstrated a persistent and blatant disregard for Commission regulations, the judicial process, and the authority of the Federal Courts. OCCA sees no extenuating or mitigating circumstances warranting a limited term grant of authority. DOT argues that applicant has been in total noncompliance with various record keeping requirements. DOT asserts that applicant maintains no driver qualification files, no daily driver logs, and no vehicle condition reports. DOT voices concern about perceived continual flagrant violations which it asserts are knowing, willful, and without mitigating circumstances. In reply, applicant asserts that he has paid the penalties for his transgressions and has promised to comply with adminstrative requirements. We agree with the Administrative Law Judge that applicant appears ready to conduct his operations in compliance with regulation. However, we agree that the grant of a limited term certificate is appropriate. Such a certificate should serve both as an inducement and as an opportunity for applicant to prove himself capable of operating within the law.

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[1] This proceeding was certified to the entire Commission by Appellate Division 2.

While we will affirm the decision of the Administrative Law Judge, we believe that certain matters require comment. First, the Administrative Law Judge appeared to make a "conditional" fitness finding. Statutorily, an applicant must be found fit or unfit. In granting authority, the Administrative Law Judge perforce found applicant fit, and we affirm that finding. We agree with the Administrative Law Judge, however, that the circumstances of this proceeding warrant the grant of a limited term certificate which may be extended upon a demonstration by applicant that it has been in full compliance with statutory and regulatory requirements.

One matter regarding record keeping was not mentioned by the Administrative Law Judge in his decision, and it requires comment. Applicant is engaged in a non-transportation business in connection with which he picks up and delivers commodities of the type involved here. Applicant is advised that he must conduct his for-hire motor carrier activities and his other business activities independently and maintain separate records for each. Toto Purchasing & Supply Co., Inc., Common Carrier Application, 128 M.C.C. 873 (1978).

A final matter requires consideration. The bulk commodities exclusion employed by the Administrative Law Judge is inappropriate in grants of specific, as opposed to general, commodities authority. See No. MC-158495, OMH Trucking Company d/b/a Hubbard Cartage Company, Common Carrier Application (not printed), decided June 23, 1982. The bulk commodities exclusion thus will be deleted. In so modifying the grant of authority, we note that a carrier which filed a protest in this proceeding apparently withdrew based on applicant's acceptance of a bulk commodities restriction. We are not bound by operating restrictions to which parties have agreed in order to compromise litigation interests. No. MC-136635 (Sub-No. 69), Whiteford Truck Lines, Inc., Nationwide Points (not printed), decided October 22, 1982.

Finally, we will slightly modify the condition imposed by the Administrative Law Judge to clarify the time frame during which applicant may file any petition for the extension of its certificate.

It is ordered:

Applicant's motion to strike the appeals of OCCA and DOT is denied.

The appeals are denied because the findings of the Administrative Law Judge, as modified here, are in accordance with the evidence and the applicable law.

The application is granted to the extent set forth in the appendix. Operations may begin only following the service of a limited term certificate and upon compliance with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

Compliance with these requirements must be made within 90 days after the date of service of this decision or the grant of authority shall be void.

This decision will take affect 25 days from the date of its service.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Gilliam, Andre, Simmons, and Gradison. Chairman Taylor dissented with a separate expression. Commissioner Simmons dissented. Commissioner Gilliam did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

CHAIRMAN TAYLOR, dissenting.

Applicant's past conduct demonstrates a persistent and total disregard of the Commission's rules and regulations, DOT's safety regulations and Federal Court orders. Moreover, applicant, who bears the burden of establishing his fitness, failed to introduce any evidence which would demonstrate that he has made a sincere effort to correct past violations. In fact, there is no evidence of record to show that applicant is presently operating in compliance with DOT's safety regulations.

The applicant in this proceeding is, without question, unfit to receive a grant of permanent authority. Since there is no evidence which would demonstrate that applicant has corrected its past violations, applicant is also unfit to receive a limited-term certificate. See Curtis, Inc. v. I.C.C., 662 F.2d 680 (10th Cir. 1981); Containerfreight Corp. v. United States, 685 F.2d 329 (9th Cir. 1982).

Accordingly, I do not believe the Commission can justifiably grant this applicant even a limited-term certificate with the hope that somehow this will induce him to comply with the law. Before issuing this applicant any authority, the Commission, at a minimum, should require applicant to come forward and demonstrate that his operations are presently in compliance with DOT's safety regulations.

No. MC-160342

NOTICE: This proceeding is now administratively final within the meaning of 49 CFR 1101.2(f) of the Commission's regulations; and, in accordance with the provisions of Section 558(c) of the Administrative Procedure Act, any corresponding temporary authority expires and operations thereunder must cease upon the effective date of this decision, except that to the extent permanent authority is granted in this proceeding (and if partial, only to that extent) the corresponding temporary authority or portion thereof will continue in effect until a certificate or permit is issued and becomes effective. The filing of any further pleadings in this matter will not stay the expiration of the temporary authority related to the denied portion of the sought permanent authority.

No. MC-160342

APPENDIX

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting construction and road building machinery and equipment, and related materials and supplies, between points in Connecticut, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

CONDITION: The certificate authorized to be issued in this proceeding will expire at the end of a 15 month term unless, not more than 3 nor less than 2 months prior to its expiration, applicant files a petition for the extension of the certificate and demonstrates that it has been in full compliance with (1) the terms and conditions of the certificate, (2) the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder, and (3) the applicable rules and regulations of the Federal Highway Administration of the Department of Transportation.

Appendix D

SERVICE DATE
APR 1 1 1983

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INTERSTATE COMMERCE COMMISSSION

DECISION

NO. MC-160342

ALLAN B. ROBBINS, d/b/a ROBBINS TRAILER SERVICE,
COMMON CARRIER APPLICATION
(Monson, MA)

Decided March 31, 1983

We have considered the record in this proceeding, including the discretionary appeal of protestant Port Norris Express Co., Inc., and applicant's reply.

It is ordered:

The appeal is denied.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, and Gradison. Chairman Taylor dissented. He would have reopened the proceeding and denied the application in its entirety. Commissioner Andre was absent and did not participate in the disposition of this proceeding.

Agatha L. Mergenovich
Secretary

(SEAL)

Ms. **Gradison**. And in fact, we will gladly explain our votes on that particular case.

Mr. **Taylor**. Congressman, this case is not just one of many hundreds that has gone through. This one has received a lot of notoriety. It has been written up in the journals, it was referred to in the Wilkett litigation, it was fed to one of the local newspapers in town, in terms of my dissent, in terms of being too regulatory.

The Commissioners know very well about this case, if they want to respond, they can, but do not let them get off the hook, that this is just one of hundreds of cases that they vote on. [Applause.]

Mr. **Andre**. If I may comment on that. I think this is something close to what has been said, but I would just like for the record to say it myself, and that is, my staff has done a survey on the number of reversals in the motor carrier end that we have had in terms of the votes that I, as a Commissioner, have cast, and the figures are roughly as follows: I have voted approximately 3,000 times in about 20 months that I have been there. About half of those have been motor carrier cases, and according to the statistics that I have in my office, my votes have been reversed a total of five times, out of that 1,500.

Mr. **Shuster**. By the courts, you mean?

Mr. **Andre**. That is correct. Out of about 1,500 cases, five times the court has reversed, and I might hasten to add, too, that——

Mr. **Shuster**. How many have been taken into court?

Mr. **Andre**. I do not have that figure handy. But I can get that for you, perhaps. But the point I would like to make is that we are, I think, an appellate court of a sort, and consequently there are a lot of close calls, a lot of tight cases that come to us.

Mr. **Shuster**. Thank you.

That is all I have.

Thank you very much. I appreciate your indulgence.

Mr. **Anderson**. Mr. Sunia.

Mr. **Sunia**. Thank you, Mr. Chairman.

I have one brief comment, and one brief question.

As you recall, a few weeks ago we sat through the hearings for a whole day, and I listened to the carriers say all kinds of things about ICC. And I think it is the view of the public that the ICC, is a Commission which come together frequently to discuss various issues.

I am rather surprised this morning to find that is not so, and I would hope that perhaps that that would be taken care of in the future.

Now, my question, is it not the case that an application automatically requires a review of the fitness of the applicant?

Mr. **Taylor**. That is what the law requires, absolutely. And that should be done in each and every case.

Mr. **Sunia**. When 9 are picked out of 20,000, does that mean that the other 19,991 were automatically considered to be fit?

Mr. **Taylor**. It does not mean that.

Mr. **Sunia**. Well, then how were the nine selected? Were they standouts, for some reason?

Mr. **Taylor**. The mechanics of that is handled in Director McFarland's office, and perhaps I ought to have him explain this, how it is done.

Mr. McFARLAND. When each permanent application is filed, a copy is filed in our Regional Office which examines their records to see what information they have with respect to that applicant. They make inquiry with respect to the applicant, amongst the various places, and they look at all of the records that are available, and they determine whether or not a request to intervene on the question of fitness should be made. They elevate that through my office, to the appropriate division, which determines whether the office is permitted to intervene.

We do not do that lightly. We examine them carefully, and only those that we feel that could be raised on a petition level.

Mr. SUNIA. I assume that there are guidelines by which the Regional Offices make that?

Mr. McFARLAND. Yes, sir.

Mr. SUNIA. Thank you.

Mr. ANDERSON. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

Just a few very brief questions.

As Mr. Sunia indicated a couple of weeks ago we heard substantial testimony from the motor carrier industry practitioners, and they testified that beyond the impact of the recession, the trucking industry had lost a significant proportion of its traditional traffic base, and the question was asked at that time: Where did the traffic go? What had happened to that traffic?

There really was not a sufficient answer given to that, but it would be my impression that the traffic was perhaps largely redistributed within the overall industry, as a result of the Motor Carrier Act of 1980, and the ICC's implementation of that Act.

And I wonder if I could have the opinion of the panel on that question?

Mr. TAYLOR. That is an opinion question, Congressman. And I am sure my colleagues will want to express theirs.

I do not know that we really can give you anything other than just speculation. My view is that it has been spread around, and as it gets more spread around, I think that is going to take care of some of the bumps in the road, that is the transition that we are now involved in.

There are still a number of truck drivers who are unemployed, and it is of considerable concern to a number of people, and it is of concern to me. Hopefully, the day will come when the spreading around will begin to take up some of that slack, and particularly that should happen as the economy improves.

But to sit here and tell you how it is going to happen, or the extent to which it has already happened, or will happen in the next 6 months or 1 year, would really be just rank speculation on my part.

It is our hope, however, or at least mine, that the spreading around will continue, and the slack will be taken up. I certainly have no interest in seeing unemployed drivers any more than having unemployed other individuals in other industry.

I think as the economy improves, and we go through this transitional period, that that is going to hopefully even itself out, but I cannot give you anything more than just that kind of speculation. More hope, I guess, than anything else at this point in time.

Ms. **Gradison**. I believe a large part of the traffic decline is due to recent recession, but I think it should be pointed out that some of the truckload traffic carried by larger established trucking companies, whose data is reported now, is now being carried by other companies in the trucking industry.

In the October 3, 1983 Regular Common Carrier Conference publication called Washington Highlights, this issue was clearly addressed in a quote from Bill Legg's, Stock Analyst, and he said that we feel a significant portion, possibly as much as a third of the truckload tonnage once handled by the less than truckload carriers is now being hauled by owner operators, contract carriers, or irregular route carriers, and consequently has gone out of the reporting system.

So actually a lot of this traffic is still moving, it is just not being reported in traditional tabulations.

Mr. **Clinger**. Anybody else have a comment on it?

There has been testimony here this morning by you earlier on the whole issue of predatory pricing, and the earlier testimony from the industry was that this was creating chaos in the industry, and was really resulting in tremendous amount of confusion.

What impact has the effect of this—what has been the effect of this on questions of entry into the industry?

Mr. **Taylor**. I do not know that I could give you any specific data or views on that, either. We have had an awful lot of entry in the trucking industry generally. We have not had as much in the household goods area. That is a very, very specialized area, that not everybody wants to get into.

Let me just make a brief comment about the word predatory, because that is thrown around rather loosely, by an awful lot of people who are ICC observers, and I think lots of people still suffer from the delusion that something is predatory if it is below cost, and that that is all that you have to worry about.

The final chapter in the predation scenario is having run the price down, and run off the competition, you then turn around and achieve a monopoly situation, at which point in time you raise the price, and the problem with the new act is that with the freer entry than we had before, by the time that price goes back up, you have got an awful lot of new people that are back in the business all over again.

So to achieve the above scenario, on an actual case of predation today, under the new act, is a very, very difficult proposition, and that is really what we try to point out in 166, and unfortunately, however, despite having done so, I think there are a number of people who watch what we do, are still convinced that anything that is not a compensatory rate is automatically predatory. And that is a very difficult message for us to be able to get across.

Of course, the problem, too, is when you start talking about costs, whose costs? The fellow who is doing the rate cutting, or the fellow who is complaining about it, or an industry average, that is a difficult proposition, as well. But I think what you are confronted with today, like it or not, under the new act, and I am not stating my views as to whether I agree with it or not, I think you are faced with the reality of the situation that predation today is a pretty tough thing to prove.

Now, you have got the same or similar problem with discrimination that affects carriers. We do not have a dual operation rule any longer. Common carriers can hold contract authority. Contract carriage, of its very nature, is essentially discriminatory, because you make a contract with one guy, that may be different than the contract you make with somebody else.

So those kinds of traditional distinctions, too, are getting more and more difficult to make, and that was pointed out with some care in 166, as well.

So under the new ballgame, the old traditional concepts of what constitutes discrimination, and predation, I do not think have really been—we hear the allegations all the time, but I do not think people have really thought about them in the context of what the law now says.

Mr. CLINGER. Other comments? Any of the others?

Mr. STERRETT. To get back to your specific question as to whether this chaos is deterring new entrants, I point out that, the simple statistic is that it is not. Entry it still very high.

I would suspect it may be leveling off but there still is a high rate of new entrants coming into the business.

Mr. CLINGER. So you do not feel that it has had a kind of inhibiting effect on the entrant?

Mr. STERRETT. No, sir, I do not.

Ms. GRADISON. We really do not see the new competition as adding or creating chaos. Rather we see it as creating new service options.

Mr. CLINGER. There was testimony when the industry representatives were here 2 weeks ago indicating by the owner-operators a high degree of distress. I think all of you have indicated that the economy, with the rebounding of the economy coming out of the recession, this is going to solve the problem for the industry

Mr. TAYLOR. We hope it will.

Mr. CLINGER. Right. And you have testified that the truck earnings have been increasing. But how do you feel the owner-operators are going to fare coming out of this recession?

In other words, are they going to be—is it going to lift, all rising rides going to lift all boats, or are the owner-operators going to have unique problems that will not be addressed by a mere recovery of the economy?

Mr. TAYLOR. Again, Congressman, we have hopes and expectations. I cannot tell you as a certainty that the rising tide will lift all boats. I think that probably if I had to speculate about it, that as the economy improves, a lot of the owner-operators are going to improve. They were one of the loudest complainers about discounting and a lot of the rate practices that were going on, so I guess they are the ones that got the most pinched and have suffered in terms of their revenues, and they are the really little guys of the trucking business. And they all have payments to make on their equipment. And so if their monthly take goes down, they are in serious trouble. Probably not all of them will survive. A lot of them simply got into the business who thought, gee, this is a great opportunity to be a truck operator. Some of those who have not got an awful lot of capital behind them and have been strenuously hurt because of the recessionary period, are going to have some difficulties. But I would guess those that can hang on, their lot will improve as the economy improves, and certainly it is our hope, but we are just now getting into an economic upturn and that is an important thing because we have not had an opportunity to evaluate all this regulatory reform in the context of an upturn.

So far we have had to do it all during a downhill slide, and that has been unfortunate because a lot of finger pointing has been going on in an effort to try and blame either the act or the Commission for some of the financial problems of those in the industry. I think it is going to be quite interesting to see as we experience good times how that really unfolds. And I guess as happens in any other line of work, some will succeed and some will fail, but generally overall, as the economy improves, their lot should improve along with it.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. ANDERSON. The Chair has a problem. We are going to recess at 1 o'clock and come back at 2 o'clock to hear our next witness. But I do have a couple of questions that I may have you answer for the record.

First, I will read it to you. If you feel a burning need to answer, you can.

The Commission's staff and budget have decreased in recent years. Would you please tell us what your current budget is and how many people are currently employed in the ICC, and what effect this has had on the Commission's ability to carry on its function? Has the Commission had to curtail or limit any programs? What is your budget and staffing request for 1985, and how will that effect the Commission's ability to carry out its functions?

Would any of the Commissioners like to comment on the budget request, and how it might affect the Commission's ability to carry out its functions? I would like to submit that to you and have you answer it for the record, unless some of you have a burning desire to answer it right now.

Mr. TAYLOR. I think it would be better to do it for the record too. Because you have asked a lot of information. I can simply give you a lot of fast numbers.

We are down around 1,200 now. Our figure for 1984 is—we are shooting for 1,050 for 1985. That is apparently now out with OMB. So I guess it is no longer a secret.

Our biggest problem at the moment is with respect to the allocations. Not so much the overall numbers but how do you allocate those numbers, and my biggest concern has been in really essentially two areas. Director McFarland's area insofar as our enforcement activities are concerned, because I cannot tell you how many times we have come before this committee, it used to be Adam Benjamin on the budget side on the House, now it is Congressman Lehman, and over and over again I spend maybe 10 minutes testifying and Director McFarland spends about an hour and a half talking about enforcement activities. And that seems to be the sum and substance of what the testimony has been. I have run into the same proposition as far as the Senate side is concerned, specifically with Senator Andrews and his Transportation Subcommittee. Congressman Lehman is so concerned about the whole proposition that he has asked for a GAO report on our enforcement activities. And also we were given some additional people for fiscal year 1984, we still are not over that hurdle yet. There has been a vote of the Commission, my colleagues have decided as of now that the additional resources we were given should not all go to the Office of Compliance and Consumer Assistance, but rather they want to dump some into the Office of Proceedings which is probably at this point in time the only office in the building that really is overstaffed, if there is one.

We are addressing that in due course. Whether it is and to what extent really remains to be seen, but certainly it does not have a shortage of people.

On the other hand, Director McFarland's operation has taken a 50 percent cut just over the last couple of years, and we feel it is very important with the admonitions from Congress, both the Senate and the House, in our appropriations areas that we maintain an active and efficient enforcement staff.

Now, we are having the same argument insofar as 1985 is concerned. What should be the allocation to our compliance and consumer activity? The only other office that we have a really serious contention about is the Office of Special Counsel which my colleagues have voted to totally do out of business, and I feel very strongly about that one because that office has been terribly supportive and helpful in trying to make the Bus Act work. So we have those problems at the moment over the budget. They are not totally resolved and I will probably be up on the Hill to talk about them further to the extent there is not some ultimate Commission resolution.

I am particularly concerned that we have adequate resources to do the kind of enforcement job that this committee and that the House Appropriations Committee and the Senate Appropriations Committee expect us to do.

Mr. ANDERSON. And I am asking you to do a better job on enforcement of illegal trucking that comes in across the Mexican border and elsewhere.

Mr. TAYLOR. Yes, you are, Mr. Chairman.

As you note, we had a proceeding with regards to that, and I think, as I pointed out to you, at that proceeding, given the cuts that have now been mandated, I doubt very much if we could even keep the individual that we have down there at San Ysidro presently on the payroll. If we have to live with the allocations that my colleagues have suggested, we are going to be forced with the necessity of probably closing some offices and doing with less people rather than more. And I am going to see anyway that I can that that does not happen, and also that the Office of Special Counsel is not eliminated.

Now, my colleagues may or may not want to comment on this now or written submittals. However, but that, I think, summarizes where we are with our budget concerns at the moment.

Mr. ANDERSON. I have three other questions on this that I will submit for the record, and then I have some other questions relating to the bus bill. I want to ask one or two of those now. We will try to go through those as fast as we can and be back at 2 o'clock.

The Bus Regulatory Reform Act of 1982 provided a mechanism for the carriers to exit from intrastate portions of an interstate route. The act also provided for easy entry in all circumstances, and almost automatic entry where the carrier wants to serve a point which has been abandoned.

Can you tell us the situation with respect to exit requests? Can you tell us whether or not new or existing carriers are applying to serve these points? Are these provisions working successfully? If your answer is no, what do you think needs to be done to improve the situation, and finally, do you have any suggestions on how to improve the entry and exit provisions?

Mr. TAYLOR. I think as far as the specific numbers are concerned, Mr. Chairman, I endeavored to cover those in my summary, at the outset of the proceeding. I do not know that we need to do that again, but we are hearing now a number of both exit appeals and rate appeals, and a number that we have had, and how we have disposed of them, I believe is in my prepared summary statement, so I do not know that we need to go over that.

We are trying very hard to make the Bus Act work. To me the important key to making it work is, first of all, making sure that the States feel that they have not been just totally out of the act.

I have just been up to the NARUC Convention in Detroit, and met with their Motor Carrier Committee, and also with their Executive Committee, on which I hold the ICC seat, and that is the concern that they have. I tried to convince them that the act was designed to provide a meaningful State partnership and not just total preemption of the State's activities, with the idea that all the carrier need to do is muscle its way through that obstacle course, and then ultimately come to the ICC and get its relief.

I think it is quite important that the time fuses are short, that we provide a meaningful procedure for the States, and we are trying to do that. We have a California case now, as a matter of fact, and I am going to meet with them in December, to discuss that proposition in further detail.

The other thing that is terribly important about it, and I might say that our Office of Special Counsel is endeavoring to work with the State commissions to make that whole operation a meaningful proposition for the State commissions.

The other thing that is important, is that we be able to find some substitute, or replacement service, as these abandonments or discontinuances take place, and it is not going to be easy, and it is not going to happen overnight, but that is what our Small Business Office has been asked to do at the Commission, and to the extent that we are not able to find sufficient replacement and substitute service behind some of these discontinuances, we are probably going to be in trouble with the Bus Act.

As far as I am concerned, if we are really going to make it work, it is essential to do, because if it is perceived, or in fact works out, as simply a device for rural America to be done out of its bus service, essential bus service, I am talking about now, not buses that ride up and down the road with one or two people in them, then I think we have some serious difficulties, and I do not think that need happen. And I am working very hard, and I think my colleagues are all in unison, in that we all want to make the Bus Reform Act work, and I think that is one of the important keys to having that happen.

We are trying to evaluate those cases, with those concepts in mind.

Mr. **Anderson**. The Bus Regulatory Reform Act instructs the Commission, on considering an exit request, to give great weight to the extent to which variable costs exceed revenues received.

What data do you require that the carriers provide to indicate his revenues? Is it possible, or likely, that under this requirement the carrier would indicate zero revenues? And is their data provided in the manner that an impacted community might find useful in determining how much money it would have to raise to subsidize the service, or find alternative service?

Mr. **Taylor**. I recognize your shortage of time, and because of the nature of the question, I think we might best answer that later for the record.

Mr. **Anderson**. And then my final question, and also for the record.

A major concern in the bus industry is the failure of the Commission to take enforcement action against illegal operators.

What is the Commission doing specifically about operators providing service without the appropriate operating authority? What is the current state of the Commission's overall enforcement program?

The same way in that, if you would like to answer later. I will send down additional questions.

Mr. **Taylor**. I could give you some data on that now, but again, in the interest of time, I can give you some information for the record, if you would like.

[Mr. Anderson's supplemental questions to the ICC, and responses, appear on page 1564.]

Mr. **Anderson**. Very good.

Thank you very much, and we appreciate all the Commissioners coming here, because I think it gives us an idea of some of the problems that you have.

So, at this time, we will stand in recess until 2 o'clock. At that time we will have the Assistant Secretary of Transportation for their policy.

[Whereupon, at 1:17 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

[Subsequent to the hearing, supplemental questions were submitted to the Interstate Commerce Commission by Representatives Howard and Anderson. The questions and responses follow:]

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

January 12, 1984

Hon. James J. Howard
Chairman
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Howard:

Thank you for your letter submitting several questions regarding implementation of the Bus Regulatory Reform Act of 1982 as a follow-up to the oversight hearing held on November 16, 1983.

I am enclosing the responses adopted by the Commission for the hearing record. Any additional individual responses by members of the Commission will be sent to you separately.

Again, the Commission appreciates this opportunity to provide you with further information regarding our activities related to the bus industry. If I can be of any further assistance, please let me know.

Sincerely,

Reese H. Taylor, Jr.
Chairman

COMMUTER BUS INTERESTS

1(a) The commuter provisions in the Act were put in the Act for a purpose. Would you care to comment on the statements made by the State of New Jersey and say whether or not the purpose of those provisions are understood by the ICC and whether or not those provisions are being implemented in a manner that will carry out that purpose.

The Bus Act contains specific provisions designed to provide certain protection for existing commuter bus operations. We are aware that these considerations were included by Congress in an attempt to reconcile efforts being made by Federal, State and local governments to promote the use of mass transportation by commuters with the desire to ease entry and exit of motor passenger carriers in the marketplace. S. Rep. No. 411, 97th Cong., 2d Sess. 5 (1982) (Senate Report).

Under the eased entry requirements, an applicant for motor passenger carrier authority is required to present evidence to satisfy a fitness test, which is limited by the statute to consideration of applicant's safety fitness and compliance with certain insurance requirements. Unless a protestant satisfies the burden of proof applicable to the type of service proposed by the applicant, the application will be granted. In promulgating rules to govern the filing of and disposition of passenger applications, we took the commuter safeguards into consideration in discussing the evidentiary burdens imposed on the parties under the Bus Act. See Ex Parte No. 55 (Sub-No. 56), Applications for Operating Authority - Motor Passenger Carriers, 133 M.C.C. 62 (1982).

Charter or special operations proposals provided by a privately-funded carrier may be opposed only on the basis of applicant's fitness showing. For interstate regular-route service, intrastate regular-route service based on interstate routes authorized after November 19, 1983, and service provided by a carrier receiving government financial assistance, protestant must establish that the proposed transportation is not consistent with the public interest.

Congress emphasized that such applications are presumed to be in the public interest, and that it is protestant's burden to establish otherwise. In determining whether the proposed transportation is in the public interest, four factors must be considered: the transportation policy set forth at 49 U.S.C. 10101(a), the value of competition to the traveling and shipping public, the effect on small community service, and whether issuance would impair the ability of other motor common carriers of passengers to provide a substantial portion of their entire regular-route passenger service operations (the impairment test).

The Senate Report[1] indicates that the public interest test can be an important tool in ensuring that commuter bus service is not adversely affected by the eased entry standards. For example, one of the safeguards in the Bus Act to protect all commuter bus interests is the inclusion of a goal as part of the national transportation policy which calls for promotion of transportation services which will provide and maintain commuter bus operations. That report also points out that the fourth factor, the impairment test, is particularly useful to commuter bus operators inasmuch as their operations are a localized, regular-route service. However, the Commission is directed to give all factors equal weight and to be aware that the paramount consideration is not the protection of existing carriers, which now have the freedom to initiate new pricing options and services, but the benefits to be derived by the public from a new service.

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[1] S. Rep. 411, 97th Cong. 2nd Sess. 17 (1982).

Thus, a commuter bus operator opposing an interstate or intrastate regular-route application that qualifies as a "public interest" application (or a special and charter service by a government subsidized carrier) has the opportunity to express its special interest as provided within the four "public interest" factors. The Commission has handled a number of regular-route "public interest" applications and, where commuter bus service is involved, that factor is specifically considered in weighing the national transportation policy elements. See, for example, No. MC-106207 (Sub-No. 18), New York-Keansburg-Long Branch Bus Co., Inc., Extension - Atlantic City, NJ, served March 28, 1983, p. 5, and No. MC-138730 (Sub-No. 15), Caravan Coach Lines, Inc., Extension - New Jersey, served May 18, 1983, p. 6, and, on appeal, August 8, 1983, and, on reopening, September 1, 1983. A final Commission decision following reopening was served on December 30, 1983. Since that decision addresses in detail the issues raised in this question, a copy of the decision is attached for information.

As explained in that decision, the relevant transportation policy factor, i.e., provision and maintenance of commuter bus service, may also apply to applicant which itself proposed a commuter bus service in competition with protestant. Moreover, that factor is but one of a number of factors that we are required to consider, several of which seek the addition of competitive services and the promotion of more efficient operations.

The impairment test to be applied as the fourth factor in making "public interest" findings requires a showing that protestant's ability to continue operating a substantial portion of its entire regular-route system is materially jeopardized. The statute specifically states that diversion of the carrier's traffic, which would include commuter passengers, is not in and of itself a sufficient basis for finding impairment.

Inasmuch as the presumption that the proposal is in the public interest is in applicant's favor and, in view of the applicant's limited fitness burden, the extent of the evidentiary showing required of an applicant to establish that a grant is warranted is not extensive. In the decisions on the bus authority applications mentioned above, and others filed by Caravan Coach Lines, Inc. as well as other carriers, the extent of protestants' competitive operations and the potential harm from a grant are reviewed. Unless protestants present specific evidence to address the factors we are required to consider and establish that a substantial portion of their entire operations will be significantly impaired by applicant's entry, we have no basis for denial of the application. Recently, however, the Commission amended its rules governing these applications to allow protestants to reply to opposition statements to ensure that protestants had an opportunity to reply to applicant's submission with regard to public interest or commuter bus issues previously raised by protestants. The application of the factors and the weight to be accorded the evidence is not altered. See Ex Parte No. 55 (Sub-No. 56), Applications for Operating Authority - Motor Passenger Carriers, served September 6, 1983.

Applications for intrastate regular-route authority based on interstate authorizations issued before November 19, 1983, and applications for the removal of intermediate point restrictions may be opposed on the basis of a "commuter bus" test. These applications are based on authorities existing before passage of the Bus Act and must be processed within 90 days. Opposition is limited to those parties which can demonstrate that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area. While this is an important protection for existing commuter bus operators, use of the provision has been limited. No 90-day intrastate application has been opposed. In those few restriction removal requests which have been opposed, the commuter bus interests have been analyzed extensively. See, for example, No. MC-138730 (Sub-No. 13)X, Caravan Coach Lines, Inc. - Territorial Broadening, served March 25, 1983.

In sum, we acknowledge the Congressional mandate evidenced by the commuter bus provisions included in the Bus Act and are attempting to implement them to the fullest extent possible, consistent with recognition of other considerations that the Commission is directed to consider.

SERVICE IN THE NATURE OF A SPECIAL OPERATION

1(b) The provision in subparagraph (H) of paragraph 2(A) of subsection (c) was placed in the Act because of the unique circumstance surrounding special service in some states. In particular, the situation at Atlantic City, New Jersey was indicated as a unique situation. How has the Commission construed that provision and would you please say what you think the provision means and whether or not the Commission has "disregarded" the provision.

The entry preemption provisions of 49 U.S.C. 10922(c)(2)(A) and (B) provide for the authorization by this Commission of intrastate operations on a route over which the carrier holds interstate authority. Whether subparagraph (A) or (B) is applicable depends on the date the underlying interstate authority was issued. Pursuant to the provision referred to in your question [49 U.S.C. §10922(c)(2)(H)], the ICC's authority to authorize intrastate transportation does not apply to intrastate regular-route operations which are in the nature of a special operation.

In adopting rules to govern applications for authority to serve intrastate points on interstate routes, we noted the provision in the Bus Act which prohibits carriers operating under an intrastate certificate issued by this Commission from mixing regular-route passengers with charter or special passengers in the same vehicle, unless the State has authorized the charter and special service and allows mixing. We also discussed the legislative history pertinent to these provisions, and referred to the House Report language explaining that the Commission does not have the authority to authorize intrastate charter service or special operations. See H. Rep. No. 334, 97th Cong., 1st Sess.

29, 33-35, 1983. Accordingly, we determined that the Commission has no jurisdiction to issue an intrastate certificate which authorizes charter or special regular-route operations, nor will a regular route intrastate certificate the Commission issues include the right to perform charter or special operations over that route.

The Commission's position on this issue has been clarified in a number of decisions involving intrastate regular-route applications. See, for example, No. MC-164967 (Sub-No. 1), Pocono Mountain Trails, Inc., Common Carrier Application, served June 29, 1983, and, on appeal, September 14, 1983, and No. MC-146206 (Sub-No. 4), RBR Corporation Common Carrier Application, served November 3, 1983. In such cases, applicants are advised that the interstate regular-route service that they are authorized to conduct must conform to an ordinary, conventional regular-route scheduled service. In addition, they are advised that their operations may not be in the nature of a special operation or a charter operation. The characteristics which distinguish ordinary regular-route passenger service and other service are established by Commission precedents. See Capital Bus Company v. Catawese Coach Lines, Inc., 133 M.C.C. 170 (1983).

In some instances, protestants have sought imposition of a restriction against the performance of special operations. Yet, to restrict against that which we have no jurisdiction to authorize would serve no useful purpose and would not be consistent with Commission practice.

Special operations is an ambiguous or "catch-all" classification used to describe operations of several different types which are neither a charter operation nor an ordinary, regularly scheduled bus operation. See *Michaud Bus Lines, Inc., Extension - Tours*, 100 M.C.C. 432, 443 (1966). Regular-route operations are also characterized by a number of indicia, several of which may be found in a special operation. A carrier is conducting a regular-route operation if it publishes definite schedules, which is an essential characteristic, and observes certain other elements considered essential. See *Transportation Activities, Brady Transfer & Storage Co.*, 47 M.C.C. 23, 52 (1947).

Because some aspects of special operations are present within ordinary regular-route operations, it is not possible to frame a general restriction that excludes all aspects of a special operation from an intrastate regular-route certificate. Moreover, neither the provisions of the Bus Act nor the legislative history require restrictions of this nature in order to specifically exclude any aspect of a special operation or, more specifically, those aspects associated with such operations conducted at Atlantic City to serve casino patrons.

Protestants have also sought specific exclusion of special operations where the statutory exclusion has no relevancy. See No. MC-142630 (Sub-No. 7), *Fuzazy Express, Inc., Extension - Atlantic City Contract Service*, served July 28, 1983, and on appeal, October 5, 1983, and No. MC-163163 (Sub-No. 3), *Eagle Bus, Inc., Extension - Atlantic City, NJ, Regular Routes*, served September 9, 1983, and, on appeal, November 4, 1983.

Unless an applicant indicates that it intends a special or charter operation in conducting a requested intrastate regular-route authority, there is no basis for denying an application or requiring applicant to submit detailed evidence of a proposed regular-route service in instances where it expresses an intention to perform a regular-route operation. In the application, a carrier is required to describe briefly the service that it intends to provide to ensure that the application is properly filed. The remaining requirements pertain to applicant's burden of proof of fitness. Where the application involves regular-route service, we cannot assume that illegal operations will be performed. We should also note that inclusion of one feature of a special operation, such as a casino bonus, is not sufficient, by itself, to negate applicant's stated intent to provide regular-route service or to establish that a special operation will be performed instead. Of course, if the applicant does in fact perform a special operation, interested parties may file a complaint with the Commission.

The proceedings we have mentioned indicate the serious consideration that this Commission has given to the statutory exclusion of special operations from intrastate authorities, and they discuss our construction of the statute in light of the legislative history. We believe our implementation of the "special operation" provision has been proper and fully in accordance with the law and Commission practice.

JOINT BOARDS

2. Subsection 10342 of Title 49 permits the Commission to establish joint boards for certain purposes. One purpose is issuing operating authorities. In the interest of better state-Federal cooperation on the issue of entry where commuter service or special operations are involved in an entry application, would you favor referring such proceedings to a joint board for an initial decision? If you do not favor this procedure, please explain why you do not. If you do favor this procedure, please tell us how soon it can be implemented.

The entry provisions of the Bus Regulatory Reform Act of 1982 balance the goals of the national transportation policy and the legitimate interests of the States. In general, entry application cases are handled under the modified procedure. This allows applicant and protestants to submit evidence in the form of written verified statements. Use of this procedure also allows the Commission to meet the statutory deadlines applicable to the processing of these cases (180 days for an initial decision). In most instances, this procedure is appropriate to satisfy the needs of all interested parties and to allow the Commission to consider the relevant issues within the statutory timeframe. It is also important to note that, even under the modified procedure, States may participate in any interstate entry application for the purpose of challenging applicant's fitness. States may also file petitions for leave to intervene to present evidence of inconsistency with the public interest.

Nevertheless, there may be particular cases that involve issues of State-Federal relations where an entry proceeding should be scheduled for an oral hearing before a joint board. By law, of course, such proceeding must involve not more than three States. At the same time, only cases involving very significant issues having important local or regional considerations should be referred to a joint board. Otherwise, the modified procedure allows for more expeditious and efficient processing of these cases.

As far as implementation of joint board procedures is concerned, the Commission already has the mechanisms in place, through our Offices of Proceedings and Hearings, to begin joint board hearings immediately upon a determination that a certain proceeding warrants such processing.

EC

SERVICE DATE
DEC 30 1983

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-138730 (Sub-No. 15)

CARAVAN COACH LINES, INC., EXTENSION - NEW JERSEY
(Wharton, NJ)

Decided: December 22, 1983

By decision served September 1, 1983, this Commission reopened this proceeding on its own motion to allow the protestants to file a rebuttal statement to applicant's reply statement. In a decision served May 18, 1983, and affirmed by Division 1, acting as an Appellate Division, in a decision served August 8, 1983, Review Board No. 2 excluded from consideration evidence submitted by applicant in its reply that constituted new evidence. We concluded, however, that none of the materials were improper. The materials, which include schedules and fares for the proposed service and support statements, validly can be considered in evaluating whether the proposed transportation is inconsistent with the public interest and, thus, properly are filed in accordance with Commission procedures established in promulgating the rules governing bus applications filed under the provisions of the Bus Regulatory Reform Act of 1982. Because the statement includes evidence presented for the first time by applicant which pertains to the public interest and protestant bears the burden of proving the public interest issue, protestants were accorded the opportunity to respond to those materials.

Subsequently, the rules which govern motor carrier of passenger applications at 49 CFR Parts 1160 and 1168 were modified to clarify the scope of an applicant's reply in applications not filed under "fitness-only" criteria and to accord protestants the opportunity to reply to certain evidence submitted in such replies. See Ex Parte No. 55 (Sub-No. 56), *Applications for Operating Authority - Motor Passenger Carriers*, served September 6, 1983. In promulgating the rules under the provisions of the Bus Act in a decision in the above-identified proceeding served November 19, 1982, the Commission adopted an exception to established Commission procedure governing the contents and filing of pleadings by the parties in operating rights applications, which procedures prohibit the inclusion of new evidence in an applicant's reply statement and the filing of a reply to a reply. See, *Kerr Contract Carriage, Inc., Contr. Car. Applic.*, 115 M.C.C. 862, 866 (1972). Because of the disparity under the Bus Act between the applicant's burden of proof, which is safety fitness, and the protestant's burden of proof, which may be, as pertinent, either a broad public interest standard or a commuter bus standard, the Commission concluded that an applicant's initial filing could not be required to address the numerous components embraced in the protestant's standard of proof without being unnecessarily burdensome. As a result, an exception to Commission practice was established in such proceedings which essentially provides applicant the opportunity to file an addendum to its application and submit evidence which, although limited to information rebutting or further explaining the public interest or commuter bus issue previously raised in the record by protestant, nevertheless constitutes new evidence in the record in support of the application. Because the rules did not provide for this exception to the scope of an applicant's reply, they were modified accordingly at 49 CFR 1160.83 and 1168(h). Furthermore, the rules were modified at 49 CFR 1160.95a and 1168.4(e) to allow a protestant in these circumstances to reply to such submissions by applicant. No new evidence is allowed under the rules in protestant's reply, and the development of the record of those passenger applications to which this exception pertains is terminated upon the filing of that reply.

In response to the reopening of this proceeding, rebuttal statements were filed by protestants Community Transit Lines, Inc., Lakeland Bus Lines, Inc., the Community Bus Division of Local 33 of the United Transportation Union (Community Union), the Lakeland Bus Division of Local 33 of the United Transportation Union (Lakeland Union), and the New Jersey Department of Transportation (NJDOT). Protestant NJ Transit Bus Operations, Inc., (NJTBO) did not file a rebuttal. We have reviewed the record and the previous decisions in this proceeding, and we adopt the findings of fact in those decisions. The proceeding is reopened to consider all of the evidence submitted in applicant's reply and protestants' rebuttal statements.

Protestants again request that this proceeding be set for oral hearing in order to more fully develop the record to establish whether the application would be consistent with the public interest. We have reviewed the additional evidence in this proceeding and conclude there are no new issues of fact material to the disposition of this proceeding which cannot properly be resolved on the basis of the evidence that has been submitted under the modified procedure. Accordingly, protestants' requests for oral hearing are denied. Similarly, protestants' request that the proceeding be referred to a joint board pursuant to 49 U.S.C. 10341(a) will be denied. Petroleum Carrier Corp. of Florida v. United States, 380 F.Supp. 744 (M.D. Fla. 1973); Theatre Service Co., Ext.-Duluth, Ga., 113 M.C.C. 744, 746-47 (1971).

As a preliminary matter, Lakeland asserts that applicant's reply is of no probative value because it is signed and submitted by applicant's attorney, who does not verify the information and does not establish that he has personal knowledge of the facts presented. In our previous decision it was determined that all of the evidence contained in the reply is material and relevant in evaluating the factors to be considered in this proceeding. In representing applicant throughout this proceeding, the attorney acts as applicant's agent and has the power to represent its interests. Under Commission regulations at 49 CFR 1104.4, the attorney's signature constitutes a certification of the documents being submitted, which are not required to be verified by the attorney. The attorney in this proceeding is in a position to have knowledge of applicant's operations and to make statements concerning the nature and extent of those operations. There is no reason in this record to believe that the reply should be given less weight because applicant, who otherwise signed the application form and verified its contents, has not signed the reply. All of the contents of the reply are included in the record at this time for our consideration.

In support of the argument that a grant of the application will be consistent with the public interest, applicant submits evidence to demonstrate that the proposal is in keeping with all four factors that the Commission is required to consider in determining the public interest issue. First, the goals of the national transportation policy will be promoted because expansion from local operations to an areawide operation provides a more effective and efficient service. Applicant does not operate under union contract and it asserts that it incurs lower operating costs and charges lower fares than the protestants, which are larger and unionized. The Bus Act, it contends, does not provide that unionized carriers be favored in the granting of applications.

Secondly, it is argued that the proposal will be of value to the public by providing a competitive commuter passenger service in northeastern New Jersey. Bus service in the area is dominated by Lakeland, which counsel asserts attempted to discourage applicant in recent meetings from conducting competitive operations. Upon applicant's advertising a proposal to serve a route extending from Wharton on proposed route No. 1 to Culvers Lake, NJ, and soliciting local interest along the route, applicant was contacted by Lakeland. Lakeland advised applicant in two meetings that the route was not viable, that it would reinstitute its own service over the route which it was not currently serving under a duplicative authority, and would oppose such an application by applicant. Four schedules are submitted which represent the nature and extent of the operations applicant proposes to institute upon a grant. They identify the points to be served, the service time for westbound and eastbound service, and the combination of the sought routes used to provide the service. Each schedule is compared with those of Lakeland at comparable points. At Ogdensburg, the end point of proposed route No. 1, applicant is proposing five schedules with pick ups at two points in town, while Lakeland, it is argued, offers only one scheduled run a weekday at an early time and pick up at the western edge of town. It proposes five schedules at Wharton on route No. 1 at which Lakeland reinstituted service and compares the times as more convenient than Lakeland's. Furthermore, applicant asserts that bus service will be made available at points that have no service at present. A comparison of applicant's proposed fares at 10 points and those charged by Lakeland is submitted, which indicates differences between 5 cents and 20 cents per trip. Finally, 89 support statements are filed as well as letters from the mayors of three cities on the routes, indicating an interest in the proposed services. Applicant identifies 14 communities that it proposes to serve which collectively have a population of 70,000 and which it argues had no bus service at the time the application was filed.

Finally, applicant argues that none of the three protesting carriers demonstrates how a substantial portion of their regular-route services will be impaired by a grant. It asserts that Community and NJTBO have a limited interest in the proposed operations because they are authorized to serve a very small portion of the routes. Community serves the Meadowlands Sports Complex on route No. 1 in special evening racing service, and it serves Morristown on route No. 5 at a single location. Applicant, on the other hand, already serves Meadowlands under special operations authority and a temporary intrastate regular-route authority extending to Patterson, NJ. As for Morristown, it proposes service at four locations at the center. Furthermore, Community does not serve any point on the remaining 31 mile route to New York that applicant proposes to serve. NJTBO's duplicative authority is confined to the route between Wayne, NJ, and New York over which it operates 100 schedules daily and which represents a minor portion of its entire operations. Applicant proposes only four schedules over that route. Applicant admits that Lakeland has a substantial interest in the proposal. However, it is argued that protestant has operated over the involved routes for 30 years, and that any diversion under applicant's modest service proposals over the same routes should not be significant. Applicant asserts that the three bus companies identified by protestants did not go out of business because of competition. It argues that Somerset Bus Company and Manhattan Transit Company had little or no competition over most of their routes. Furthermore, no service was discontinued inasmuch as NJTBO took over virtually all of their operations on behalf of the State. Rather, it contends that their unionization required higher costs than are competitively feasible today. Applicant receives no state subsidy and argues that the expansion of its operations as an independent carrier should be encouraged by the State as an effort to save tax money.

In its rebuttal, Lakeland's president argues that contrary to applicant's contentions, the proposed service, which is directly competitive with virtually all of its operations, will not be of value to the traveling public. The four proposed schedules are based on the seven proposed routes and, protestant contends, are ambiguous and useless, inasmuch as it is not indicated how the routes are to be combined to serve the points identified, the times are not feasible, and, in certain instances, protestant offers earlier pick ups and faster service. Protestant asserts that it currently offers service over all of its routes, several of which do not support themselves, and ceases to maintain schedules where there is no need and the operations are grossly uneconomical. With respect to Ogdensburg, applicant's proposal to offer 5 schedules daily in contrast to Lakeland's single schedule is without merit. It argues that Ogdensburg has a population of 2,727, only two persons a day at most board there, and it has never received a request for additional service there. On the other hand, Lakeland asserts that it offers service at nearby Sparta, which it serves exclusively as a result of NJTBO's exit from Sussex County routes and on which profits it relies to continue unprofitable Sussex County routes.

Protestant confirms that it reinstituted service along that route between Culvers Lake and Wharton in response to applicant's interest in the route to demonstrate that no need exists for service over that route. It inquired of applicant whether applicant were interested in the route and advised that such operations were not viable. In a four-month period, only one or two customers used certain schedules there. On the other hand, at nearby Dover, Lakeland offers 34 eastbound and 39 westbound daily weekday schedules which it argues are preferred and used by Wharton riders. It submits a study from February through August, 1983 of riders at Culvers Lake which reflects a total of 690 eastbound and 803 westbound using that service.

As for those New Jersey areas where applicant alleges it seeks to introduce bus service, Lakeland asserts that that would be the Bedminster to Bardsville area in route No. 7 which it was denied authority from this Commission to serve and which it now also seeks in an application filed under the Bus Act. Contrary to applicant's contentions, Lakeland argues that it has no monopoly over its routes but that 95 percent of them are served by other carriers. Lakeland submits a list identifying all of the communities it now serves and the carriers competing at those points. It reveals that points in Sussex County and a few other distant northern New Jersey points have no competitive service. Furthermore, most of the competing service is from New Jersey Transit's rail lines. As for fares, Lakeland argues that it has not increased fares in the past 15 months and does not propose to do so. Protestant argues that over the years it has built up the routes it now serves through lengthy Commission proceedings involving 36 separate applications designed to meet the public's need in the involved area. Applicant's proposed service, it argues, is an attempt essentially to acquire protestant's most lucrative routes, and any distinctions described by applicant are superficial. Protestant submits 132 testimonials on a form letter which update those filed with its protest and which are signed by different individuals that request this Commission take no action on behalf of applicant which would harm protestant.

Mr. George York, Lakeland's vice-president, contends in a statement that the meeting between him and applicant's president is not accurately described. Rather, his comments were informally made when applicant's president came to his office for a few minutes to pay a bill.

Finally, a statement is submitted by Marion L. Hall, a transportation consultant which has analyzed protestant's revenues and expenses since 1974. In response to a request by protestant to analyze the potential impact of a grant of this application on protestant's operations, Mr. Hall conducted a passenger survey which was furnished to all of protestant's riders to New York City on Wednesday, July 29, 1983. The survey inquired whether the rider would switch to another comparable bus service at the same fare if it were available, and 9.5 percent indicated that they would. Thus, Mr. Hall contends that a grant would result in the diversion of approximately 10 percent of Lakeland's existing traffic, which represents $500,000 of the total revenues for 1982 of $5.1 million. He argues that expenses, however, could not be reduced so that, as a result of the losses, Lakeland would experience a deficit net income of $150,000, a reduction in service, and an inability to buy new equipment. Initiation of lower fares by applicant therefore would totally destroy protestants, he argues, by depriving it of a substantial portion of its regular-route traffic to the detriment of the commuting public. Mr. Hall further contends that protestants' fare structure is not higher than those for other profitable bus companies serving the area, virtually all of which are unionized. Moreover, he argues that union wages ensure better bus drivers and operational stability, and that low fare structures have caused competitive bus companies to go out of business, rather than high union wages.

In its rebuttal, Community argues that applicant does not correctly describe the extent of its competitive service at Meadowlands and Morristown. Community explains that service at Meadowlands is performed continuously on a daily basis in regularly scheduled operations and that there already is substantial competition over the route with another carrier. Further, protestant states that it serves downtown Morristown and stops at any subsequent cross street. In an update of traffic figures, protestant asserts that during July, 1983, it earned $25,723 in revenues from the Morristown-New York City service which represents 13 percent of its total revenues for that period.

NJDOT, in its rebuttal, reiterates that the northern New Jersey area is adequately served by commuter bus carriers and that a grant would result in destructive competition by diluting existing traffic. Virtually all of the sought routes are within New Jersey and the State is vitally interested in preserving the commuter bus system there which is highly developed and intensely competitive. The Bus Act, it argues, specifically seeks to preserve commuter bus service within a state and New Jersey commuter service is a uniquely developed service that requires specific consideration by the Commission.

The local union organizations representing the employees of Community and Lakeland argue that, contrary to applicant's assertions, protestants maintain financially sound, well managed operations that provide employees with fair wages and benefits which ensure the public a dependable, viable commuter service. Statements prepared by an employee of Community and employees of Lakeland are filed in support of the unions' argument that applicant's working conditions are substandard. The unions argue that a grant therefore would not be consistent with the public interest, as it would not promote the operations of a carrier that is well managed nor one that maintains fair wages and working conditions. Furthermore, they believe that the impairment of protestants' operations as a result of applicant's competitive service would deprive the public of the services of carriers that meet those criteria.

We have reviewed carefully the record in this proceeding and the additional evidence included in the record at this time. Applicant, as a nonunionized operator, is charged by the unions with allowing substandard working conditions that result in equipment failures and burdensome working hours that threaten the public safety. Applicant demonstrates, however, that it is an established carrier that satisfactorily serves the public in bona fide operations in compliance with the Department of Transportation safety regulations that govern the safety aspects of a carrier's operations. Such claims by the unions, which essentially are self-serving, do not establish that applicant operates in violation of the pertinent safety regulations nor that applicant otherwise would not conduct the operations to be authorized in a safe manner in compliance with the law. Thus, we are satisfied that the applicant has demonstrated its fitness within the limited scope of our fitness inquiry under 49 U.S.C. 10922(c). See Ex Parte No. 55 (Sub-No. 56), *Application-Operatin - Mtr. Pas. Car.*, 133 M.C.C. 62, 64-65 and n. 4 (1982). The entire record clearly reflects that applicant is fit, willing, and able to provide the proposed transportation and to comply with pertinent regulations.

We further conclude that the record in its entirety does not establish that a grant would not be consistent with the public interest. The Bus Act directs that in making any finding relating to the public interest, the Commission consider, to the extent applicable, the national transportation policy at 49 U.S.C. 10101(a), the value of competition to the traveling and shipping public, the effect on small community service, and whether issuance would impair the ability of other passenger carriers to provide a substantial portion of their entire regular-route passenger service operations. 49 U.S.C. 10922 (c)(3).

The national transportation policy at 49 U.S.C. 10101(a)(2) includes nine goals to be accomplished in regulating such transportation under its provisions. As emphasized by protestants, one of those goals is to provide and maintain commuter services. 49 U.S.C. 10101(a)(2)(F). Applicant proposes a commuter bus service and intends to conduct such operations pursuant to four scheduled runs that serve various points on the proposed routes several times daily to and from New York City. The schedules describe points and times that are logical and viable for such a service. Protestants also provide commuter service that is competitive at certain points on the proposed routes which they intend to continue in response to market demands, so that commuter service would exist by one or several carriers at these competitive points. Applicant is an experienced carrier which has performed operations locally within the involved area for several years. Although applicant is not required to pay the wages, offer the benefits, nor otherwise manage its operations at a level required under union contract with respect to its employees, this does not establish that applicant's management is not sound or effective and that it cannot perform a commuter operations. While protestants' working conditions under union contract may be beneficial to their employees and competition from applicant may threaten the extent of their present operations, their ability to continue commuter services and maintain adequate profits and fair employment policies should not be affected if they are efficient and well managed. 49 U.S.C. 10101(a)(2)(D).

Furthermore, a number of other goals set forth in the national transportation policy support applicant's request. These include allowing the most productive use of equipment and energy resources and improving and maintaining a competitive, privately owned motor carrier system. 49 U.S.C. 10101(a)(2)(G). Applicant receives no government funds, unlike most competitive bus services in New Jersey which are subsidized by NJDOT or operated under its aegis through NJTBO. Furthermore, the proposal will meet the needs of passengers and other consumers, as well as allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public. 49 U.S.C. 10101(a)(2)(B). Statements by public witnesses submitted in the record reflect a public interest for the proposed service at various points and a desire for an alternative service. Proposed schedules at certain competitive ponits are not duplicative of those of protestants but offer alternative locations and times at lower fares.

Next, the record as a whole reflects the value of competition to the traveling public from applicant's entry in the involved marketplace. The proposed routes duplicate most of Lakeland's routes. However, applicant proposes service at only some of those points on the routes served by protestant, and the proposed schedules generally provide for pick up and discharge at different locations and at different times than those of Lakeland. Applicant also proposes a competitive service at those few points on the sought routes that duplicate certain routes of Community and NJTBO. However, the schedules provide for service at points on protestants' routes not served at present by them, as well as routes not presently served by any other operator.

Applicant will serve small communities that do not now have service, and certain of the routes traverse less populated areas of the State. In response to applicant's intention to file for certain competitive authority, Lakeland has reinstituted service on a route that had become dormant. While attempts by protestant to protect its routes from incursion are understandable, exclusivity in operations has no place in determinations under the Bus Act, which instead encourages the introduction of new service under eased entry standards and emphasizes the benefits of competition. Lakeland is the sole bus operator at most points on the routes. Existing carriers have the ability to compete with various marketing programs and with innovative services in the face of competition, rather than lose their traffic in the absence of entry protection.

Finally, protestants' additional evidence fails to establish that issuance of the certificate would impair their ability to provide a substantial portion of the regular-route service which they perform over their entire regular-route system. Community is authorized to serve essentially two major points, Morristown and Meadowlands, on the proposed routes which it asserts accounts for 13 percent of its over-all revenues. Lakeland seeks to demonstrate that 10 percent of its entire commuter traffic would be diverted upon applicant's entry in the involved marketplace. The record reflects however, that the loss of the entire volume of protestants' described traffic represents the maximum diversion possible and is not likely. Applicant already serves Meadowlands in similar service and will conduct operations between Morristown and New York City over a different route than Community's, so that the impact of service under this application would not be significant. Lakeland, in turn, is a large carrier which provides scheduled services substantially more extensive than those applicant proposes, whose proposals provide for different times and locations. Protestants fail to submit figures or other data which establish the extent of their over-all regular-route operations or which identify with precision the extent of those operations within the scope of this application by which we are to assess accurately the potential impact of applicant's service upon their entire regular-route system, which includes the operations of any affiliates or subsidiaries. Protestants argue generally that the loss of such traffic will affect over-all operations by reducing income, which results in the reduction of various services, equipment maintainance, and less traveled routes. Inasmuch as the loss of such traffic is not shown to be likely, the impact that they assert will result on their operations is also not established. Furthermore, the Bus Act specifically provides that the diversion of revenue or traffic shall not itself be sufficient to support a finding that a carrier's entire regular-route operations will be substantially impaired. 49 U.S.C. 10922(c)(3).

In sum, we cannot conclude from the entire record as now made that any of the protestants, including NJTBO, have established that a grant would not be consistent with the public interest. Rather, the commuting public will be afforded an alternative service designed to meet their needs in an economic and efficient manner.

We find on further proceedings:

Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. This action will not significantly affect either the quality of the human environment or conservation of energy resources. An appropriate certificate should be granted.

It is ordered:

The statement of facts and findings of Division 1, acting as an Appellate Division, in a decision served August 8, 1983, is adopted as supplemented and modified to reflect the preceding matters dealt with above.

The application is granted to the extent set forth in the appendix. Operations may begin only following the service of a certificate and upon compliance with the following requirement set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1306).

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurred in part with a separate expression.

James H. Bayne
Acting Secretary

(SEAL)

CHAIRMAN TAYLOR, concurring in part:

This proceeding raises important "public interest" issues in connection with the national transportation policy goal which mandates the promotion of transportation service which will "provide and maintain commuter bus operations." 49 U.S.C. 10101(a)(2)(F).

Under the circumstances, protestants' request that the proceeding be set for oral hearing has merit, and I would have granted this request so that the issues involved could have been decided on a more complete record.

No. MC-138730 (Sub-No. 15)

APPENDIX

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting passengers, (1) between New York, NY, and Ogdensburg, NJ, from New York over Interstate Hwy 495 via the Lincoln Tunnel to junction New Jersey Hwy 3, then over New Jersey Hwy 3 to junction U.S. Hwy 46, then over U.S. Hwy 46 to junction New Jersey Hwy 23, near Wayne, NJ, then over New Jersey Hwy 23 to junction U.S. Hwy 46, then over U.S. Hwy 46 to junction unnumbered highway near Danville, NJ, then over unnumbered highway to junction U.S. Hwy 46, then over U.S. Hwy 46 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction unnumbered highway near Rockaway Township, NJ, then over unnumbered highway to junction New Jersey Hwy 15, then over New Jersey Hwy 15 to junction unnumbered highway near Wharton, NJ, then over unnumbered highway to junction New Jersey Hwy 15 near Rockaway Township, NJ, then over New Jersey Hwy 15 to junction New Jersey Hwy 181, then over New Jersey Hwy 181 to junction County Hwy 517, near Sparta, NJ, then over County Hwy 517 to Ogdensburg, and return over the same route, (2) between Wharton, NJ, and Singac, NJ, from Wharton over unnumbered highway to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction New Jersey Hwy 23, then over New Jersey Hwy 23 to Singac, and return over the same route, (3) between junction Interstate Hwy 80 and U.S. Hwy 206, near Netcong, NJ, and Secaucus, NJ, from junction Interstate Hwy 80 and U.S. Hwy 206 over U.S. Hwy 206 to junction County Hwy 512 near Peapack, NJ, then over County Hwy 512 to junction U.S. Hwy 202, near Far Hills, NJ, then over U.S. Hwy 202 to junction unnumbered highway, then over unnumbered highway to junction Interstate Hwy 287 near Basking Ridge, NJ, then over Interstate Hwy 287 to junction New Jersey Hwy 24, near Morristown, NJ, then over New Jersey Hwy 24 to junction Interstate Hwy 78, near Summit, NJ, then over Interstate Hwy 78 to junction Interstate Hwy 95 (New Jersey Turnpike), near Newark, NJ, then over Interstate Hwy 95 (New Jersey Turnpike) to junction New Jersey Hwy 3 at Secaucus, and return over the same route, (4) between Bernardsville, and Summit, NJ, from Bernardsville over County Hwys 527/525 Spur, near Basking Ridge, NJ, then over County Hwys 527/525 Spur to junction County Hwy 512, then over County Hwy 512 (Valley Road) to junction unnumbered highway near Summit, NJ, then over unnumbered highway to junction Interstate Hwy 78, at Summit, NJ, and return over the same route, (5) between Budd Lake and Morristown, NJ, from Budd Lake over U.S. Hwy 46 to junction unnumbered highway near Netcong, NJ, then over unnumbered highway to junction New Jersey Hwy 183, then over New Jersey Hwy 183 to junction U.S. Hwy 206, then over U.S. Hwy 206 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction U.S. Hwy 46, near Ledgewood, NJ, then over U.S. Hwy 46 to junction New Jersey Hwy 10, then over New Jersey Hwy 10 to junction New Jersey Hwy 53, near Morris Plains, NJ, then over New Jersey Hwy 53 to junction U.S. Hwy 202 near Morris Plains, NJ, then over U.S. Hwy 202 to junction New Jersey Hwy 24, near Morristown, NJ, then over New Jersey Hwy 24 to junction Interstate Hwy 287 at Morristown, NJ, and return over the same route, (6) between Bedminster and Newark, NJ, from Bedminster over U.S. Hwy 206 to junction Interstate Hwy 78, then over Interstate Hwy 78 to junction U.S. Hwy 22, then over U.S. Hwy 22 to Newark, NJ, and return over the same route, and (7) between Bedminster and Newark, NJ, from Bedminster over U.S. Hwy 206 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95 (New Jersey Turnpike), then over Interstate Hwy 95 (New Jersey Turnpike) to Newark, NJ, and return over the same route, serving all intermediate points in routes (1) through (7) above.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

March 2, 1984

Honorable Glenn M. Anderson
Chairman
Subcommittee on Surface Transportation
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Anderson:

Thank you for your letter submitting follow-up questions to the motor carrier, bus and household goods oversight hearing held on November 16, 1983.

I am enclosing the responses adopted by the Commission for the hearing record. Individual responses by members of the Commission have been so designated and have been included along with the Commission response to that particular question.

Again, the Commission appreciates this opportunity to provide you with further information regarding our activities related to the motor carrier, bus, and household goods industries. If I can be of any further assistance, please let me know.

Sincerely,

Reese H. Taylor, Jr.
Chairman

I. General

1. The Commission's staff and budget have decreased in recent years. Would you please tell us what your current budget is and how many people are currently employed by the ICC?

The FY 1984 budget is for 1,150 full-time permanent staff-years and $60,000,000. As of January 21, 1984, 1,162 full-time positions are filled.

1. (a) What effect has this had on the Commission's ability to carry out its functions? For example, has the Commission had to curtail or eliminate any specific programs?

The reductions in the Commission's budget in recent years are reflective of the regulatory reforms brought by the Motor Carrier and Staggers Acts of 1980 and The Bus Regulatory Reform Act of 1982. The Commission's implementation of these statutory reforms has resulted in reductions in virtually all of the Commission's activity areas. Where regulatory functions have been reduced or eliminated, resources committed to those functions have been reduced, eliminated, or put to other use.

The Commission's exercise of exemption power has eliminated or dramatically reduced the need for resources devoted to boxcar rate matters, export coal regulation, motor carrier contract rates cases, almost all of the smaller rail abandonments, and almost all finance transactions for both motor and rail. Eased motor carrier entry has also diminished the need for resources in the licensing area. Perhaps most significantly, the reduction of ratemaking oversight through statutory provisions for market dominance, jurisdictional thresholds, zones of ratemaking freedom, and rail contract rates have reduced our need for resources in the rates area. Rates proposals are now only rarely protested. For example, of the 1,224,254 tariffs filed with the Commission in FY 1983, only 181 were protested. Further savings in this area will result from a major overhaul of our tariff regulations, expected to be completed in the next few months, and from the implementation of electronic tariff filing which is expected in the near future.

The Commission is continuing to look for ways to carry out its statutory obligations more efficiently, and we are also seeking to eliminate burdensome regulations which serve no useful purpose. This ongoing process would occur independent of budgetary constraints, and we do not believe that budget limitations have forced us to eliminate or curtail any function we otherwise would have continued. Indeed, our budget for FY 1984 contains funding for 50 staff years we thought unnecessary.

Separate Response of Chairman Taylor

1.(a) What effect has this had on the Commission's ability to carry out its functions? For example, has the Commission had to curtail or eliminate any specific programs?

The Commission's budget has been substantially reduced over the last several years in accordance with changes in our regulatory responsibilities. Our FY 1984 budget, for example, reflects a decrease of 46 percent in Commission employment since 1979, the year before Congress enacted regulatory reform legislation affecting the rail, motor carrier and household goods industries. During this period, the Commission has moved forward, both administratively and legislatively, to reduce regulation whenever possible. In general, we have been able to carry out our statutory functions at reduced resource levels without eliminating specific programs.

For FY 1984, the House Appropriations Committee added 25 staff years to the Commission's budget request because of its concern with the effectiveness of the ICC's enforcement program. The Senate Appropriations Committee also increased the ICC's staffing levels to ensure that the Commission fully performed its responsibility under existing law. Following conference consideration of the matter, the FY 1984 appropriation for ICC was one which would support 1,150 full-time permanent staff-years. At this level, I believe we were given sufficient resources to satisfactorily carry out our functions in accordance with Congressional intent; however, my colleagues' allocation of part of these added staff years to Proceedings instead of to OCCA has, at least to some extent, thwarted hoped-for improvements in the effectiveness of our enforcement program.

1. (b) What is your budget and staffing request for FY 1985 and how will that affect the Commission's ability to carry out its functions?

The Commission's FY 1985 budget request is for $53,966,000 to support 987 full-time and 1,022 total staff years. We believe these resources will prove more than adequate to enable the Commission to carry out its statutorily required functions. It should be noted that at the conclusion of both FY 1982 and 1983, we turned back large amounts, and that may well occur again at the end of FY 1984 and 1985.

Separate Response of Chairman Taylor

1. (b) What is your budget and staffing request for FY 1985 and how will that affect the Commission's ability to carry out its functions?

The FY 1985 budget request is for $53,966,000 and 987 full-time permanent staff-years. However, I believe that in order to fully carry out our statutory responsibilities, a staffing level of 1023 full-time permanent employees is necessary. This staffing level would require budget authority of $55,481,000 for FY 1985. My views are explained in the transcript of a recent hearing before the Transportation Subcommittee of the House Appropriations Committee at pages 36 to 47.

2. (a) Is the Commission planning to eliminate any reporting requirements for Class I and II motor carriers?

   (b) If so, can you tell us what reporting requirements will be eliminated.

   (c) Is the elimination of these reports within the Commission's discretionary powers? If so, please specifically indicate where that authority exists.

(a) The Commission is currently in the process of reviewing its motor carrier accounting and reporting rules to determine whether it would be feasible to eliminate any or all of these requirements. We are attempting to identify rules which could be eliminated, while still allowing the Commission to fulfill its current statutory functions. Once we have completed our review of the regulations, a notice of proposed rulemaking will be issued to solicit comments from the industry and other interested parties.

2.(b) The following reporting requirements will be included in our review:

- -- the accounting requirements in 49 CFR 1207, Uniform Systems of Accounting for Class I and Class II Common and Contract Motor Carriers of Property;
- -- filing of Annual Report Forms M and M-H required in 49 CFR 1249, Reports of Motor Carriers; and
- -- filing of Quarterly Report Form QFR required in 49 CFR 1249.

However, it should be emphasized that no decision has been made to eliminate particular reporting requirements. The matter will be the subject of a rulemaking, and a decision will not be made until the Commission has considered the comments filed in that proceeding.

2.(c) The Commission's authority to prescribe a uniform accounting system for carriers and to require that carriers file reports are contained in 49 U.S.C. §11142 and 49 U.S.C. §11145, respectively. Both sections are permissive, allowing, but not mandating, that the Commission set requirements for the carriers in these areas.

II. BUS REGULATORY REFORM ACT

1. There has been concern expressed about the possibility of public transit authorities using a loophole of the Bus Act to enter nationwide tours and charters service.

   What is your understanding of Congressional intent in this matter?

In recent licensing cases, the bus industry has raised questions concerning applications by governmentally-funded carriers to operate charter and special services. These carriers, which are "recipient[s] of governmental financial assistance for the purchase or operation of buses," may not claim the advantage of the "fitness only" burden of proof normally applicable to privately-owned bus lines seeking authority for charter and special operations. Rather, in these cases, an application may be denied if protestant can establish that the proposed transportation is not consistent with the public interest.

Seven of these applications are the subject of a pending petition to consolidate filed by the American Bus Association (ABA).[1] ABA contends that it is inconsistent with the public interest to grant such authority to any applicant which can use its subsidized position to mount potentially unfair competition against carriers operating in private enterprise. At the same time, other parties have argued that any grant of authority to these applicants is inconsistent with the policy of certain portions of the Urban Mass Transit Act (UMTA).

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[1] Two of these applications were subsequently withdrawn, but several additional applications have been filed.

The Bus Act does not provide that applications by governmentally-supported carriers should be denied. In fact, the present burdens of proof under the new Act are substantially more favorable, even to the public-funded applicants, than the old burden that each applicant prove that a proposed service be required by the public convenience and necessity. As indicated, the Bus Act does subject governmentally-funded carriers to a stricter public interest test. Neither UMTA nor the Interstate Commerce Act, however, prohibit an UMTA-subsidized carrier from conducting special and charter operations.

The Commission is aware of Congressional interest and concern in this area. As Congress directed in the Bus Act, applications by government-subsidized carriers for special and charter authority are being subjected to the public interest, rather than the "fitness-only," test. The Commission is currently considering the ABA petition and these pending applications and will weigh the various factors which are part of the public interest test in reaching a determination on the merits. Full and careful consideration will be given to these important matters.

2. The Bus Regulatory Reform Act has been in effect for approximately one year. In your opinion, have the effects been good or bad, or is it too soon to reach any conclusions? In your opinion, does the Act need to be amended? Please explain your answer.

On balance, the Commission feels that the effects of the Bus Act have been positive. There has been a significant amount of entry into the industry as new carriers begin operations and existing carriers expand. Carriers are taking advantage of the reforms of the Act to rationalize their route structures. Noncompensatory rates are being eliminated, while innovative discount programs are being instituted as carriers become more competitive. We believe that this increasingly competitive environment will result in improved price and service choices which will benefit both the industry and the public.

Although the industry is already responding positively to the operational freedoms afforded by the Act, experience with other industries, such as trucking, that have moved from a regulated to a more competitive economic environment, convinces us that it may well be another year or two before the full impact of bus regulatory reform is realized. During this period, it appears likely that replacement service especially by smaller lower cost carriers will develop to serve many of the points where dislocations have occurred or have been proposed. A recent article on bus deregulation in the New York Times on December 29, 1983 points out that larger carriers are turning over some marginal routes to smaller carriers, and that Trailways has transferred 29 routes to smaller carriers. The article also notes that smaller operators may be able to make money where the larger carriers could not, because of lower costs and greater familarity with the needs of the area. Additional time will permit greater analysis of the adequacy and extent of such service.

3. A major concern in the bus industry is the failure of the Commission to take enforcement action against illegal operators.

   (a) What is the Commission doing specifically about operators providing service without the appropriate operating authority?

(a) The Commission conducts a compliance and enforcement program regarding unauthorized carriers generally, but unauthorized passenger operations have been and remain a very high enforcement priority area.

Complaints regarding such activities are received in our regional complaint centers, where staff members initially seek to resolve the matter administratively through telephone contact or correspondence with the carrier subject to the complaint. Unresolved complaints (and complaints involving aggravated circumstances) normally are referred for investigation. Investigations also may be instituted based on information obtained through road checks, which are conducted pursuant to cooperative agreements with the various states, or from arrest reports which are routinely received from the states. If the field investigation reveals unauthorized operations and informal measures of resolution are unsuccessful, the staff institutes legal action through court or other procedures to obtain compliance.

During Fiscal Year 1983, OCCA handled 97 complaints against passenger carriers allegedly engaged in unauthorized transportation. During that same time period, the staff conducted 56 road check projects at numerous selected locations to detect unauthorized passenger carriers. Many of these road checks were conducted at tourist areas.

During FY 1983, 18 formal legal actions were necessary to prohibit passenger carriers from engaging in unauthorized transportation. These actions included permanent injunctions, temporary restraining orders and civil penalty actions. In addition, OCCA obtained permanent injunctions against five passenger carriers who had failed to obtain appropriate insurance coverage for protection of the public as required by statute.

There are several other recent enforcement actions of particular interest. Permanent injunctions were entered against three Mexican-operated passenger carriers, enjoining them from conducting interstate transportation without appropriate authority and insurance. A permanent injunction, entered on November 15, 1983, prohibits another passenger carrier from conducting unauthorized interstate transportation. On March 21, 1983, an individual and six related corporations were permanently enjoined from conducting unauthorized operations and a $5,000 civil penalty was imposed on the parties.

3.(b) What is the current state of the Commission's overall enforcement program?

The Commission's enforcement program is in transition from a program oriented to enforcing tariff and service issues to one that concentrates on insurance, safety, competition and consumer protection issues. This transition reflects the reforms enacted in 1980 and is consonant with the changes in the Commission's overall mission. Additionally, new provisions of law, for example those proscribing lumping and weight bumping, also require enforcement presence.

We are gratified to report that reductions in the size of the enforcement establishment have been possible, and that the competitive nature of the transportation marketplace, particularly as a result of the 1980 enactments, has made these reductions possible without any appreciable adverse impact on the operation of the transportation system. It is our intent to maintain an enforcement capability that can respond to serious competitive and consumer abuses and remain alert and effective on safety matters, though DOT has the primary responsibility in safety. We believe that this can be done through improved organization, direction and resource management, without sacrificing the need for further economy of operation.

Separate Response of Chairman Taylor

(b) What is the current state of the Commission's overall enforcement program?

In order to fully understand the current state of our enforcement program, some background is necessary. There was a period of several years during which the staff received virtually no guidance or direction from the Commission. The last guidance I am aware of, prior to our Commission conference in 1982, was provided in 1976 at the height of regulation, so to speak. Subsequently, as the deregulatory movement evolved, there was probably a view at the Commission that you virtually have to scrap enforcement when you reduce regulation. Thus, for several years, in 1979 and 1980, there was considerable talk about adopting a so-called harm standard which would require a showing of actual harm to an individual prior to initiation of any enforcement effort.

Because of comments I heard in the field concerning the absence of a viable Commission enforcement program, I determined when I became Chairman that this was an area which must be addressed. I brought Warren McFarland, the Director of our San Francisco Regional Office, to Washington to study the enforcement program. Subsequently, there was some personnel turnover, and Mr. McFarland became head of the Office of Compliance and Consumer Assistance. Since that time, he has endeavored, as have I, to develop ideas and concepts on how to improve the program.

The last chapter of that history is the Commission Conference in October of 1982 at which we attempted to provide guidance to our enforcement staff, not in terms of a prioritized laundry list, but in terms of various categories of violations identified by the Commission as important. While the Commission did not preclude staff from initiating enforcement efforts in every instance, we made it clear that the emphasis should be on a reactive, as opposed to a proactive, posture.

Now that we have had some experience under the guidelines established at the 1982 conference, and drawing upon the type of prioritization used by the FBI, we have taken data for the calendar year 1983 and endeavored to allocate the resources utilized to major categories, including "Insurance-Safety," "Enhanced Competition," "Specific Congressional Directives" and "Public Interest."

What remains to be done, a matter we are working on now, is to determine the results achieved, so that we can decide whether our emphasis on a reactive, rather than proactive, posture is producing the results the Commission intended and whether it has resulted in emphasis on the areas the Commission believes important.

You are undoubtedly aware of the fact that the General Accounting Office has just completed an examination of the Commission's enforcement program. It is my understanding that GAO's analysis will be formally submitted to the Commission for comment within a few days. I consider the GAO study very important, and you can be assured its recommendations will be taken seriously. However, based on GAO's testimony at the recent House budget hearing, it appears that a good portion of the GAO report deals with the number of cases closed in particular categories. In my view, those figures cannot be equated with areas which have received priority under our enforcement program. The reason the two are not synonymous is that we have emphasized to our staff that voluntary compliance should be obtained whenever possible. When such efforts are successful, then formal enforcement actions are not commenced.

As I indicated, we are presently in the process of developing the results of our resource allocation for 1983, and we intend to include not only an anaysis of closed cases, but also the results of our voluntary compliance efforts. When this project is completed, the Commissoners' offices will be briefed, and we will then have another Commission enforcement conference, probably in May, with all the Regional Directors present, to determine how our prior directives are working and whether additional guidelines or directives are needed.

In sum, while our enforcement program may not be perfect (and we welcome GAO's imput in this regard), nevertheless, it is a matter which is receiving the Commission's attention. Our goal is to have a relevant and effective program which satisfies the legislative objectives of the statutes under the Commission's jurisdiction.

4. The Bus Regulatory Reform Act of 1982 provided a mechanism for the carriers to exit from intrastate portions of their interstate routes. The Act also eased entry in all circumstances, with almost automatic entry where the only carrier serving a point exits from that service.

   (a) Can you tell us the situation with respect to exit requests?

(a) In the majority of States, carriers restructuring programs are proceeding relatively smoothly. Our jurisdiction to review State action has been invoked for only 16 States. Details of those cases are as follows. Through January 15, 1984, there have been 26 exit petitions filed seeking discontinuance of service over various routes in 16 States. Greyhound Lines, Inc., has filed 14 -- Georgia, West Virginia (2), California, Kansas, Oregon, Oklahoma, Nebraska, Louisiana, Pennsylvania, Minnesota, Tennessee, Washington, and Texas; Trailways Lines, Inc., and five of its various subsidiaries have filed 8 -- West Virginia, Nebraska, Tennessee, Kansas (2), Oklahoma, Alabama, and North Carolina; Oklahoma Transportation Company has filed 3 -- Oklahoma (2) and Kansas; and Missouri, Kansas, and Oklahoma Coach Lines has filed one -- Oklahoma. The Commission has taken final action in 21 cases, granting 18 of the petitions, granting one in part, dismissing one for lack of jurisdiction, and denying one. Four of the petitions which were granted were unopposed. Three discretionary appeals to decisions granting petitions filed by West Virginia and Kansas (2) have been denied. Two other discretionary appeals -- one by a carrier seeking review of the Commission's denial of its petition and one by the State of Oklahoma -- are pending. The remaining five petitions are pending before the Commission.

(b) Can you tell us whether or not new or existing carriers are applying to serve those points?

(b) The Commission does not have records as to whether particular intrastate or interstate authority has been sought to serve points to which service had been discontinued pursuant to permission granted by this Commission. Applicants are not required to furnish information in their applications as to whether authority being sought is intended to be used to serve abandoned routes and points.

The evidence in some exit proceedings does show that certain carriers are interested in providing service over routes or route segments or to points sought to be abandoned. For example, in two proceedings in which Trailways Lines, Inc., sought permission to discontinue service over various routes in Kansas, a Trailways affiliate, Trans State Bus, Inc., showed that it intended to conduct replacement services to most of the points sought to be abandoned and that it either had received, or had applications pending for, authority to serve those points. In a proceeding in which Greyhound Lines, Inc., sought permission to discontinue service over three Minnesota routes, the evidence showed that an existing carrier, with authority over one of the routes, intended to provide a substitute service for that sought to be abandoned. The evidence also indicated that a local civic organization planned to attempt to promote and increase ridership on another of the routes. In its Texas exit proceeding, Greyhound Lines, Inc., presented evidence that an individual testified at the State hearings as to his bus company's plans to offer service at one point proposed to be abandoned and that another carrier intended, subject to Greyhound's discontinuance, to institute service over a Houston-San Antonio route that Greyhound proposed to abandon. In these and other cases there has also been evidence presented showing some form of alternative service available, either by the exiting carrier which offers transportation over proximate routes or at nearby service points, or by another carrier operating over the route or to the points sought to be abandoned. In some instances, the exiting carrier proposes a route restructuring that will offer services over routes generally running over superhighways parallel to routes to be discontinued. We also note that the eased entry requirements of the Bus Act make it easy for any carrier to obtain interstate and intrastate authority to begin a new operation to meet demands for service over abandoned routes. A number of such success stories have been reported.

Just this month, the Commission's Small Business Assistance Office published a booklet entitled "Guide to Applying for Temporary or Emergency Temporary Authority" to assist small and first-time motor carrier applicants and passenger carriers. A similar guide to assist passenger carriers in obtaining permanent authority was published in December 1982.

The Small Business Assistance Office is conducting a telephone survey of State regulatory bodies to attempt to gather information as to whether carriers are seeking intrastate authority from the

States to replace services that have been discontinued. Also, a study of the intercity bus industry by the ICC's Office of Transportation Analysis, which has just been released, provides some information on new service and is attached.

Finally we note that some States' procedures in the past have hampered the efforts of larger carriers to transfer marginal routes to smaller carriers. We have stated that such resistence to service from more willing carriers appears self-defeating since it is likely that a locally based carrier, with lower operating costs, would be able to maintain service over these routes more efficiently than the larger carriers. See No. MC-52938 (Sub-No. 74), Petition of Virginia Stage Lines, Inc., For Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. 10935, (not printed), served September 13, 1983. We are optimistic that these practices will not continue in the future.

(c) Are these provisions working successfully? If your answer is no, what do you think needs to be done to improve the situation?

(c) A basic tenet underlying the Bus Act is that carriers should be able to adjust readily to changing market demands and the diverse requirements of the traveling public by not being unduly hindered either in entering new areas in search of opportunities for profit or exiting those that prove to be unsuccessful. In reaching a decision on exit requests, the Commission balances the interests of States and local communities in support of a carrier's continuing its services along with the policy of the Bus Act that favors exit from unprofitable routes and the additional goals of the national transportation policy of allowing the most productive use of equipment and energy resources, enabling efficient and well-managed carriers to earn adequate profits and attract capital, and improving and maintaining a competitive privately-owned motor carrier system. In determining the merits of applications for operating authority, the Commission is guided by the purposes of the Bus Act to significantly reduce entry barriers for all forms of intercity bus service and to permit existing bus companies to expand their services and provide more efficient interstate and intrastate services.

We find the exit, rate and entry provisions of the Bus Act to be successful and the effects to be as intended. Absent a subsidy offer or exceptional public need, carriers should not be required to continue unprofitable operations which jeopardize their ability to provide service on their other intrastate and interstate routes by requiring cross-subsidization by successful operations. If a demand for transportation service exists in areas that carriers seek to discontinue serving and it can be furnished profitably in some form, new business will seek, and should be allowed, to enter the field. Local entrepreneurs should be able to expand existing services or begin new ones, perhaps involving smaller vehicles, lower wages, and a different marketing and scheduling approach, that might be more appropriate to conditions in an area than the services of a carrier seeking to exit.

(d) Do you have any suggestions on how to improve the entry and exit provisions?

(d) The exit provisions of the Bus Act have had the intended effect of negating previous regulatory restrictions and slow action by State regulatory bodies, and have influenced many States to bring their regulations more into line with the exit criteria of the Bus Act. Many States are now working closely with carriers in a spirit of cooperation rather than as adversaries. This coordination should be encouraged. The reduced entry requirements of the Bus Act have increased competition by enabling carriers to expand existing operations or enter new areas easily, and undoubtedly have provided an incentive to existing carriers to improve the efficiency of their operations by providing service at the lowest rates possible consistent with the quality of service that consumers prefer. We do not believe that changes are necessary to the entry and exit provisions of the Bus Act.

5. (a) The Bus Regulatory Reform Act instructs the Commission, when considering an exit request, to give great weight to the extent to which variable costs exceed revenues received. What data do you require that a carrier provide to indicate its revenues?

(a) The Commission requires that a carrier provide calculations of the annual interstate and intrastate passenger and express revenues which accrue as a result of the service which would be discontinued or reduced (but not including revenues which the carrier expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumptions underlying the calculations. A number of States have similar or identical requirements.

(b) Is it possible or likely that under this requirement, a carrier would indicate zero revenues?

(b) There have been instances where a carrier had indicated zero revenues for one or more particular routes or points sought to be abandoned. The zero figure can be based on a traffic count for a particular period. Such a revenue calculation may also be the result of eliminating revenues that would be retained by the carrier after the exit. Both the Bus Act and our rules require the carriers to identify the amount of revenues that will be subject to loss as the result of discontinuing a service. Thus, the carrier calculates how much revenue will be retained in cases where points to be abandoned are in close proximity to other points where its service will still be available and where passengers and express from affected points still would be handled by the carrier. If the carrier determines that 100 percent of the revenues subject to loss will be retained, the revenue figure will be zero.

(c) Is this data provided in a manner that an impacted community might find useful in determining how much money it may have to raise to subsidize the service or find alternate service, and does the timing of the process allow such subsidization without a break in service?

(c) Carriers present evidence of the revenues that accrue as a result of the service that would be discontinued and of the variable cost of operating the affected service. Usually, these data pertain to an entire route or route segment sought to be abandoned (rather than any point-by-point breakdown of revenues and cost), requiring the impacted community to determine the portion of the unprofitable route it is interested in maintaining. Carriers are required to furnish information in response to objections as to their estimates of any annual subsidies required to continue service, and traffic, cost, revenue, and other data necessary to determine the amount of any financial assistance required to continue service.

An offer of subsidy is a mechanism by which States, local communities, and other entities can demonstrate that they have a concrete interest in maintaining unprofitable services. If an acceptable subsidy is offered, it is likely that an exit petition would be withdrawn or denied. However, no State, regional, or local authority has yet presented evidence in an exit proceeding of its having offered a subsidy to any carrier to continue affected services. Of course, it is possible that the timing of the exit petition process might make subsidization without a break in service difficult. To counter this possibility, the Bus Act permits this Commission to order a carrier to continue service over affected routes for a limited period before discontinuance becomes effective. The Commission has done so in instances where the evidence of record shows some promise that real efforts are being made to develop financial assistance, promote ridership, locate replacement carriers, or discuss other viable alternatives to complete abandonment and loss of service. However, for State, regional, or local authorities to wait until the conduct of an exit proceeding before this Commission to consider offering financial assistance to a carrier would appear not to be in the best interests of the riding public. The possibility of a loss of service is known long before an exit petition is filed with this Commission, at least as soon as the time when a discontinuance request is made at the State level. Serious offers of subsidy should be made at the earliest time possible in order to enable meaningful negotiations with the carrier to find some solution to unprofitable operations short of discontinuing them. Knowledge of the exact amount of money involved is not necessary for a good faith offer to be made and negotiations to begin.

III. Motor Carrier Act and Household Goods Transportation Act

1. The Motor Carrier Act of 1980 was enacted in July 1980. The effects of the Act were somewhat clouded for the first two years because the Nation was in the throes of a recession. The effects of the recession were conceded, but starting last year. the Committee has been told by segments of the industry that the ICC is not carrying out the intent of the 1980 Act and because of the failure to follow Congressional intent, the industry is in a very bad financial condition. Perhaps the most recurrent charge made by the industry is that the Commission has abdicated its regulatory authority in the area of rates.

   (a) I would like you to comment upon the current state of the industry and to comment upon whether or not the rate policies initiated by the ICC have benefited the trucking industry and the shippers it serves.

The motor carrier industry is recovering along with the rest of the economy. This is indicated by the earnings data for the 100 largest motor carriers. These carriers account for approximately 44 percent of Class I and II carrier revenues, and data for the first, second and third quarters of 1983 show substantial earnings improvement above comparable periods in 1982.

Another favorable indication is the increased traffic volume. Revenue tons hauled by these carriers for the third quarter of 1983 were 4.2 percent higher than the tonnage during the same period of 1982. This represents the first year-to-year quarterly improvement in traffic volume since the third quarter of 1981.

As a result of the broad-based earnings improvement in the first nine months of 1983, net carrier operating income of the 100 largest trucking companies for the twelve months ending September 30, 1983, increased 121.5 percent to $528.3 million, compared to the same period of 1982. Net income also more than doubled, rising 119 percent to $278.4 million. Operating revenues increased 2.8 percent to $15.9 billion, even though revenue tons hauled declined 2.5 percent. Rate of return on shareholders' equity substantially increased to 9.59 percent from 4.28 percent.

A review of the data filed by smaller Class I motor carriers and by Class II motor carriers also shows that the earnings of many of these carriers also increased during the first nine months of 1983.

During the recessionary period, it was especially important to permit flexible pricing to give carriers every opportunity to obtain adequate revenues. See 49 U.S.C. 10701. These results have long-run benefits as well. This belief was confirmed in a recent report issued by the Commission in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, served September 13, 1983. In this report, we determined that the new pricing practices have greatly benefited the shipping public and have led to increased carrier efficiency and heightened marketing sensitivity. If the number of new carriers is any indication, many must believe significant financial opportunities are present in motor transportation.

Separate Response of Chairman Taylor

2. In Ex Parte No. 55 (Sub-No. 57), Exemption of Motor Carrier Finance Transactions, the Commission is proposing to exempt motor carriers from the merger, consolidation, and acquisition of control provisions of the Act.

   Apparently, the Department of Transportation and the Department of Justice disagree with the Commission's proposal.

   Section 21(b) of the Bus Act gives the Commission some authority to exempt these types of transactions from regulation by the Commission. Is it your view that Section 21(b) was intended to allow the Commission to remove all of its regulatory controls over these transactions or that the power was to be utilized on a more restricted basis?

In Ex Parte No. MC-55 (Sub-No. 57), the Commission proposed to exempt, under 49 U.S.C. 11343(e), motor finance transactions subject to regulation under 49 U.S.C. 11343(a)(1)-(5), between motor carriers of property and between motor carriers and non-carriers. I dissented in part from that Notice of Proposed Rulemaking, served June 7, 1983, based on the legislative history and Congressional intent underlying enactment of 49 U.S.C. 11343(e), as part of the Bus Regulatory Reform Act of 1982. In my dissent, I expressed concern over the possible antitrust ramifications of a total exemption involving all classes of motor carriers of property, and I cited the Commission's earlier pledge to Congress, set forth in a letter to Chairman Howard, dated June 8, 1982, that the Commission did not anticipate "the exemption would be used in major transactions involving possible anticompetitive effects." Accordingly, I concluded that, at least for the time being until more experience could be gained, financial transactions involving only Class I motor carriers should be handled on an individual basis rather than by the class exemption procedure.

Comments have now been filed in this matter and are presently under consideration. Because the question you raise is at issue in a pending proceeding, any further discussion on my part would not be appropriate. I expect, however, that a decision will be issued very shortly; that decision will address the question of our authority under this exemption provision.

Separate Response of Commissioner Sterrett

III. 2. In Ex Parte No. 55 (Sub-No. 57), Exemption of Motor Carrier Finance Transactions, the Commission is proposing to exempt motor carriers from the merger, consolidation, and acquisition of control provisions of the Act.

Apparently, the Department of Transportation and the Department of Justice disagree with the Commission's proposal.

Section 21(b) of the Bus Act gives the Commission some authority to exempt these types of transactions from regulation by the Commission. Is it your view that Section 21(b) was intended to allow the Commission to remove all of its regulatory controls over these transactions or that the power was to be utilized on a more restricted basis?

Section 21(b) of the Bus Regulatory Reform Act of 1982 [49 U.S.C. 11343(e)] empowers the Commission to exempt finance-related transactions involving a motor carrier of property if the Commission finds (1) that its regulation is not necessary to carry out the transportation policy contained in 49 U.S.C. 10101, and (2) either (i) the transaction is of limited scope, or (ii) regulation is not needed to protect shippers from the abuse of market power. Since enactment of this provision, the Commission has processed approximately 70 individual applications for approval under the traditional criteria in 49 U.S.C. 11343, and we have handled approximately 500 applications for exemption under the new exemption provision. None of these applications has been opposed by shippers or other agencies of government charged with antitrust responsibility. Significantly, several large transactions betweeen Class I carriers have been processed as exemptions without opposition from the public. All of the exemption applications have been approved except for a negligible number dismissed or withdrawn for administrative reasons.

Our experience both before and after enactment of the exemption provision indicates that our regulation of motor carrier, finance-related transactions merely adds to the private and public cost of these transactions without achieving any regulatory purpose.

In the Commission's letter to Chairman Howard on June 8, 1982, it was stated that the Commission did not anticipate using the exemption in major transactions involving possible anticompetitive effects. That remains my position. As originally proposed Ex Parte No. MC-55 (Sub-No. 57) would have sought public comment on a limited class exemption for only Class II and III carriers. I voted to expand this proposal to include Class I carriers because I was interested in the public's view of whether any motor carrier, finance-related transction would be so significant as to warrant our attention and because I wanted comments which would help us delineate those "major transactions involving possible anticompetitive effects." It was my view that not all transactions between Class I carriers necessarily fall within this particular category.

Comments have been received from one shipper, one private attorney, one motor carrier, the Motor Carrier Lawyer's Association, and the Department of Justice and Transportation. As expected, the public is essentially disinterested in whether this agency exercises its jurisdiction over these matters. The thrust of the very few comments received is that someone should have regulatory power "just in case." Section 11343(e) authorizes the Commission to revoke an exemption if experience shows it is necessary.

Separate Response of Commissioner Gradison

2. In Ex Parte No. 55 (Sub-No. 57), Exemption of Motor Carrier Finance Transactions, the Commission is proposing to exempt motor carriers from the merger, consolidation, and acquisition of control provisions of the Act.

Apparently, the Department of Transportation and the Department of Justice disagree with the Commission's proposal.

Section 21(b) of the Bus Act gives the Commission some authority to exempt these types of transactions from regulation by the Commission. Is it your view that Section 21(b) was intended to allow the Commission to remove all of its regulatory controls over these transactions or that the power was to be utilized on a more restricted basis?

In Ex Parte No. MC-55 (Sub-No. 57) the Commission sought public comment on whether a class exemption should be limited or should include all carriers. The Commission was interested in the public's view of whether any motor carrier finance-related transaction, regardless of size, would have significant anticompetitive effects sufficient to warrant limiting the exemption.

We have received a limited number of comments. Some parties have generally suggested that the Commission retain the option of reviewing those transactions where protests allege a significant anticompetive effect. Others have suggested that we continue to review certain finance transactions. The Commission is reviewing these comments and will issue a decision in the near future.

Separate Response of Vice Chairman Andre

2. In Ex Parte No. 55 (Sub-No. 57), Exemption of Motor Carrier Finance Transactions, the Commission is proposing to exempt motor carriers from the merger, consolidation, and acquisition of control provisions of the Act.

   Apparently, the Department of Transportation and the Department of Justice disagree with the Commission's proposal.

   Section 21(b) of the Bus Act gives the Commission some authority to exempt these types of transactions from regulation by the Commission. Is it your view that Section 21(b) was intended to allow the Commission to remove all of its regulatory controls over these transactions or that the power was to be utilized on a more restricted basis?

I agree with the views of Commissioner Sterrett and Commissioner Gradison.

RATES

3. The Motor Carrier Act of 1980 made some revisions in the Commission's authority over the rates of motor carriers of property. Aside from the provisions dealing with released value rates and rate bureaus, the notable changes were the establishment of a zone of rate freedom, establishment of a new rule of ratemaking, and some policy guidance in the revised National Transportation Policy.

Many segments of the motor carrier industry question the Commission's implementation of the provisions and believe that rate discounting and below costs rates are having a severely adverse effect on the industry and on some shippers.

(a) Do you agree or disagree with that assessment? Please explain your answer.

The motor carrier industry has changed dramatically in response to the greater pricing flexibility allowed under the Motor Carrier Act of 1980. With the relaxed entry barriers, more carriers have entered the market, in many instances offering reduced rates. At the same time, increasing numbers of existing carriers have responded to the new pricing freedom by filing rate decreases to meet the new competitors' prices and by designing new price and service options to meet the ever-changing needs of the shipping public. Overall, the industry and shipping public have benefited from a policy or more service competition and greater pricing flexibility.

Although there have been allegations of below cost pricing, in Ex Parte No. 166, supra, every carrier commenting on this issue denied such a practice. Moreover, while it is the view of some that rate reductions have hurt the financial stability of carriers, recent favorable financial data confirm our original belief that carrier instability was due primarily to adverse economic conditions caused by the recession. These conditions may have forced some carriers to use their new price and service freedom more quickly and sometimes in a more dramatic fashion than they might have in more favorable economic times which may explain the temporary dislocations experienced by some of the carriers. Without flexibility, failures for established, higher cost carriers could have been higher.

There are now approximately 40 percent more carriers than existed July 1, 1980. While a small number have shut down for various reasons, the amount and quality of service available has increased.

3.(b) Has the Commission approved rate discounts in which the shipment moves C.O.D. and the consignee pays the rate, but the consignor or shipper receives a refund or payment of any kind? If the answer is yes, I would like each Commissioner who favors such discounts to tell us what benefit is accruing to the consignor, to the consignee, and to the ultimate consumer. And if so, please cite the legal authority the Commission used to approve such rates.

The lawfulness of carriers paying multiple-pickup discounts on shipments moving on a freight collect basis was examined in No. 37581, Central States Motor Freight, Inc. - Petition for Declaratory Order - Procedures Governing the Processing of Overcharge Claims, served September 15, 1981. The specific question whether discounts may be remitted to the consignor when the carrier collects the full freight amount collect from the consignee was addressed in that proceeding.

In that case, the Commission found that discounts for aggregation by a shipper are not allowances simply because they are not for services embraced in a common carrier's responsibility. While payment is involved, it is for the aggregation itself, not the shipper transportation of the goods. Furthermore, the fact that the payments result in lower charges for the transportation were not viewed as violating the Elkins Act provisions because, in addition to considerations already discussed, they would be published in a tariff and available to all who could meet its terms.

As to which party should receive the discount, this can be established by tariff rule. Since the tariff rules will be known to the parties arranging transportation, presumably they can adjust their financial arrangements accordingly, and one can assume that the purchase price will reflect a decision as to who will benefit from the discount. If there is no tariff rule, then there has been no arrangement made between the carrier and the person arranging the transportation and the carrier may pay the discount to either party. It would be logical to pay the discount to the party who will pay the freight bill, since this is the true contracting party paying the freight charges either directly or indirectly.

The Commission, in its decision, favored of the development of a tariff rule indicating to whom the discount will uniformly be paid. The decision notes that multiple-pickup discounts reduce overall carrier costs, fuel consumption and, ultimately, charges to shippers. Thus, they are in accordance with Congressional policies embodied in the Motor Carrier Act encouraging pricing flexibility.

3. (c) Do any of you believe that the Motor Carrier Act changed the Commission's authority with respect to rate discrimination or predatory practices in contravention of the National Transportation Policy?

It is clear from the statute and legislative history that the Commission's authority in the areas of discrimination and predatory practices has not changed with passage of the Motor Carrier Act. In Lawfulness of Vol. Discount Rates - Mot. Com. Car., 365 I.C.C. 711, 713 (1982), the Commission observed that: "the new zone (of ratemaking freedom) did not affect the Commission's powers regarding predation or discrimination. While the Motor Carrier Act of 1980 changed the National Transportation Policy ("The legislation establishes a new Federal policy which is to promote a competitive and efficient motor carrier industry...." House Report No. 96-1069 (Com. on Public Works and Transportation) p. 3. (emphasis added).), it did not remove the Commission's authority with respect to rate discrimination and predatory practices.

3. (d) Do any of you believe that the Act limited the Commission's authority to suspend and investigate rates that might be discriminatory or constitute predatory practices in contravention of the National Transportation Policy?

Nothing in the Motor Carrier Act limits the Commission's authority to suspend and investigate rates on these grounds. In fact, 49 U.S.C. §10708(d)(6) expressly provides that:

> "Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates may violate the provisions of section 10741 of this title or constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title."

3. (e) I know that the Commission has declined to issue standards for review of rate discounting practices. It chose to rely upon existing standards and proceed on a case-by-case basis. What are the existing standards? How many rate discount proposals have been suspended and investigated under those standards? How many complaint proceedings are pending where rate discounting is the issue? How many proceedings involving the issue have been disposed of and with what result?

The established standards regarding pricing levels and discrimination were discussed in Lawfulness of Vol. Discount Rates-Mot. Com. Car., 365 I.C.C. 711 (1982). In that proceeding, the Commission reiterated its longstanding precedent with regard to finding unreasonable discrimination under 49 U.S.C. 10741: a complaining party must show disparity of rates, competitive injury, and common control by the carrier over the rates charged to both the preferred and the prejudiced shipper. Only after the complaining shipper demonstrates the simultaneous existence of these three elements, does the burden shift to the carrier to demonstrate that the difference is justified by differing costs or differing transportation conditions, such as varying intensities of competition or demand. Predatory and below cost pricing were also addressed, and the tests of such behavior discussed.

There have been two discount rate proposals investigated by the Commission since passage of the Motor Carrier Act. In No. 38731, Agreements in Motor Carrier Discount Provisions, November 1981, served May 28, 1982, Consolidated Freightway Corporation filed new volume discounts ranging from 6 percent to 24 percent which were protested by other motor carriers. The Commission instituted an investigation not only into CF's new tariff, but also into the existing tariffs of other carriers which contained similar provisions. The discounts were ultimately found to be reasonable and lawful.

In I. & S. No. M-30364, Discount Tariffs, Fulmer Brothers International, Inc., discounts ranging from 51 percent to 60 percent were suspended, and an investigation was instituted by the Suspension Board into their lawfulness. The investigation was subsequently discontinued by a division of the Commission in a decision served on December 6, 1983. The Division concluded that there was nothing in the evidence of record to indicate that the tariffs under investigation were either inappropriate or significantly different from other discount tariffs already in effect. Instead, the discounts were found to reflect innovative pricing practices of the type encouraged in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, served September 13, 1983, and Lawfulness of Discount Rates - Motor Com. Car., 365 I.C.C. 711 (1982).

Currently, there are five proceedings pending where rate discounting is the issue, four of which are complaint proceedings and one of which is a declaratory order proceeding.

Numerous cases involving the issue of rate discounting have been addressed by the Commission. Since enactment of the Motor Carrier Act, the Commission has ruled on the legality of various pricing practices adopted by carriers pursuant to the new statute. Among the specific carrier practices considered and approved by the Commission are: (1) distribution of manufacturers' discount coupon advertising packets via household goods carriers in Marketing Corp. of America - Declaratory Order, 364 I.C.C. 399 (1980); (2)

carriers offering multiple-pickup discounts on shipments moving on a freight collect basis in No. 37581, Central States Motor Freight, Inc. - Petition for Declaratory Order - Procedures Governing the Processing of Overcharge Claims (not printed), decided September 8, 1981; (3) random distribution of discount coupons by household goods carriers entitling the recipient to a specified reduction of tariff charges (a type of "lottery" discount) in No. 37607, Global Van Lines, Inc. v. North American Van Lines, Inc. (not printed), decided May 12, 1982. There have also been a number of complaint cases resolved. None of these cases was filed by shippers.

Finally, in several different proceedings,*/ various parties*/ have filed petitions requesting the Commission to institute declaratory order proceedings to set more specific standards for judging the lawfulness of discount rates. In each of those proceedings, the petitions were denied. The Commission concluded that it was neither necessary nor desirable to develop rigid standards applicable to all discount rates, and that adjudication of individual rates was the best method of establishing a record for a finding of either predation or discrimination.

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*/ Lawfulness of Vol. Discount Rates - Mot. Com. Car., 365 I.C.C. 711 (1982); No. 38872, Petition for Declaratory Order - ATA - Lawfulness of Discount Rates, served October 1, 1982; and No. 38785, Movers' & Warehousemen's Association - Lawfulness of Discount Rates, served May 25, 1983.

*/ Fifteen motor common carriers; the American Trucking Associations, Inc.; and The Movers' & Warehousemen's Association of America, Inc., respectively.

3.(f) I would like an explanation of why it is not good policy to issue some general guidance on what rate discounting practices or rate reductions will be acceptable by the Commission.

We believe that it is good policy to provide general guidance to the industry as to acceptable pricing practices. We have offered this guidance in many forms, including the decisions already discussed. We continue to provide guidance in our daily decisions and proposed rule changes,*/ for example. Beyond this general guidance, the basic administrative tool--adjudication--provides the most effective means of communicating agency opinion on the lawfulness of particular activity.

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*/ E.g., see No. 37321, Revision of Tariff Regulations, All Carriers, served July 7, 1983.

Separate Response of Chairman Taylor

3. (f) I would like an explanation of why it is not good policy to issue some general guidance on what rate discounting practices or rate reductions will be acceptable by the Commission.

As pointed out in my additional comments in Ex Parte No. MC-166, I believe that the willingness of a governmental entity to listen to its constituency is its most important duty, whereas the refusal to listen can only be regarded as the symptom of a closed mind which inevitably leads to decision-making in a vacuum. The multitude of recent changes in the trucking industry and the increasing movement toward deregulation have created much confusion about the Commission's proper role. Shippers and carriers have requested guidance from us, and Congress certainly has a right to expect that we will provide it.

Accordingly, as I concluded in my separate expression, the report in Ex Parte No. MC-166 should provide at least some measure of guidance as to what practices or rate reductions will be acceptable to the Commission.

3. (g) In your opinion, do you believe the rate policies of the Commission have had positive effects for

(1) the motor carrier industry

(2) large shippers,

(3) small shippers, and

(4) the general public?

Please explain your answer, and indicate in your answer whether or not you believe any segments of the trucking or shipping industry have prospered or suffered reversals disproportionately.

The overall impact of the new pricing practices has been positive for all of the parties listed. Carriers have become more aware of their costs and, through the flexibility of the Motor Carrier Act, they are developing and exercising their ability to adapt operations to reflect individual efficiencies and demands of the marketplace. This tailoring of service to meet specific customer needs is beginning to reflect traditional marketing practices used in most other industries.

Shippers have become more transportation conscious, and are able to reduce their costs by taking advantage of the new pricing options. These new opportunities are being offered by carriers compelled by competition to be more aggressive in their sales approach and more innovative in satisfying specific shipper requirements. Large shippers have benefited primarily from economies inherent in large volume tenders to particular carriers. Small shippers have also benefited from the reduced prices resulting from the new pricing practices and from the willingness of carriers to accommodate their individual shipping needs. LTL discounts are also offered in many intances. The benefits to large shippers, however, may be proportionately somewhat greater than those experienced by small shippers because of the greater traffic volume.

As a result of the new practices, and through newly-developed efficiencies, shippers are able to reduce their own costs and often pass on savings in the form of lower prices to the general public.

3.(h) Do you believe that rates should be regulated in any manner at all by the I.C.C.? Please explain your answer.

As we have stated on other occasions, we favor abolishing motor carrier economic regulation. Even with only the partial deregulation of the Motor Carrier Act of 1980, the market has regulated rates in a much more effective manner than any government agency could. As almost all shippers will attest, transportation services today are better and less expensive than they were before 1980. While some concern remains over collective ratemaking and LTL rate levels, even LTL rates have been subject to considerable discounting due to healthy marketplace pressures of supply and demand. The most efficient and fair way to determine transportation price is through negotiations between shippers and carriers in the normal course of business, rather than through costly and lengthy deliberations before government agencies.

Supplemental Response of Chairman Taylor

3. (h) Do you believe that rates should be regulated in any manner at all by the I.C.C.? Please explain your answer.

While I have no dissagreement with my colleagues' response to this question, under the current statutory framework, the Commission still has regulatory responsibilities in the area of motor carrier rates. The Motor Carrier Act narrowed the scope of the Commission's authority over rates through the establishment of a zone of rate freedom,*/ but rate regulation was not eliminated. There is still a requirement with regard to the reasonableness of rates not filed under the zone of rate freedom. Also, the statutory anti-discrimination provision (49 U.S.C. §10741) and the prohibition against destructive competitive practices continue in effect. Until such time as Congress chooses to eliminate the Commission's rate regulation function, it is our duty to carry out our statutory responsibilities in this area.

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*/ The zone was recently expanded from 10 percent to 15 percent pursuant to 49 U.S.C. §10708(d)(2) in Ex Parte No. MC-169, Expansion of Zone of Reasonableness for Motor Common Carriers of Property and Freight Forwarders, served January 19, 1984.

4. The Subcommittee has been told that relatively few carriers are doing well, but that the remaining carriers are still experiencing financial losses even though the economy is recovering. Do you agree with that assessment? If you do agree, to what do you attribute the situation, and would you characterize it as a problem? What decisions of, or actions by, the ICC have helped to address the situation?

As we indicated in response to question 1 of this section relating to the current state of the industry, we believe that the carriers are not experiencing widespread financial losses, but rather are recovering along with the economy. Our assessment is based on recent financial data for the 100 largest motor carriers of property which we discussed in response to the earlier question. A review of the data we received from the carriers shows that the improvement in earnings has not been achieved by a select few, but has been broad-based, reflecting the recovery in the Nation's economy. For example, 72 of the 100 largest motor carriers of property reported increased net carrier operating income for the third quarter of 1983, compared to the same quarter of 1982. Also, 71 carriers and 72 carriers achieved improved income from operations in the second and first quarters of 1983, respectively, compared to the same quarters of 1982. Only 23 of the 100 largest carriers reported net carrier operating losses for the twelve months ending September 30, 1983; in contrast, 41 carriers reported losses for the 12 months ending September 30, 1982.

Similarly, a review of the quarterly reports filed by class I and II motor carriers shows a widespread improvement in operating results during the first nine months of 1983, compared to the same period of 1982. While our reports do not include the smaller, class III carriers, we are confident that the positive results of the larger carriers indicates that recovery is progressing for all segments of the trucking industry. It is our understanding that DOT is in the process of conducting a study on the small, Class III carriers which should provide additional information. The June 1983 return on equity for this industry (13 percent) was greater than the average of all other industries (10.6 percent).

5. The Commission has been implementing the 1980 Act for three years. In your opinion, did that Act give the Commission the authority to deregulate the industry or to reform it? Please give reasons for your answer?

The Motor Carrier Act was intended to reduce unnecessary regulation, and it provided significant reforms, including eased entry, rate flexibility, and reduced antitrust immunity. While these reforms were deregulatory in nature, the Act did not authorize total deregulation of the industry. This fact is evidenced by the various controls left in place by the Act.

6. The revised National Transportation Policy directed the Commission to promote competitive and efficient transportation services in order to meet eight stated goals. In your opinion, do you believe any of those goals are more important than others? Please give reasons for your answer.

We do not believe that any of the goals are more important than the others. In the context of an individual proceeding, the Commission attempts to balance these concepts in order to determine what course of action is in the public interest. Of course, all of the goals may not necessarily be relevant to the facts of a particular case and in some instances they may be in conflict. However, insofar as relevant, we consider all goals of the national transportation policy and do not attempt to promote one goal over another.

7. The ICC has been accused of ignoring not only rate decreases, but rate increases as well. As a matter of fact, the petitioners in Ex Parte No. MC-172 advanced the reluctance of the ICC to investigate collectively set rate increases as a reason for filing their petition.

   (a) Are you reluctant to suspend and investigate collectively set rates?

   (b) Do you consider the Commission's failure to suspend and investigate collectively set rates consistent with its policy emphasis on competitive ratemaking?

(a) The Commission is not reluctant to suspend and investigate collectively set rate increases when there a showing of probable unlawfulness.

(b) The Commission looks at collectively set general increase proposals on a case-by-case basis, basing its decision on the showing made by the parties at the suspension level. The fact that there have been few investigations and suspensions does not mean that the Commission is not continuing to pursue its policy emphasis on competitive ratemaking. On the contrary, as a result of current entry and rate policies, collectively set rates are declining considerably in importance, in view of the increasing and large numbers of flag-outs and independent actions by individual motor carriers.

Separate Response of Chairman Taylor

7. The ICC has been accused of ignoring not only rate decreases, but rate increases as well. As a matter of fact, the petitioners in Ex Parte No. MC-172 advanced the reluctance of the ICC to investigate collectively set rate increases as a reason for filing their petition.

   (a) Are you reluctant to suspend and investigate collectively set rates?

   (b) Do you consider the Commission's failure to suspend and investigate collectively set rates consistent with its policy emphasis on competitive ratemaking?

(a) I have no reluctance to exercise our statutory authority to suspend the effectiveness of a collectively-set rate when there is reason to believe that it violates a provision of the statute. In fact, since my arrival at the Commission in June of 1981, I have voted to suspend and investigate four general rate increases and to institute investigations without suspension in four more proposals of this nature. Three of the investigations involved increases on LTL shipments which is the traffic of concern to the petitioners in Ex Parte No. MC-172.

(b) No, I do not consider the lack of suspensions and investigations of collectively set rates to be consistent with the Commission's policy emphasis on competitive ratemaking. The traffic which is the hardest hit by this policy is small shipments. That is why I favored instituting a proceeding in response to the petitioners' proposal in Ex Parte No. MC-172. I believe that competition is an effective regulator, but where rates are collectively set, there is by definition an absence of such competition, and the Commission has a responsibility to step in where rates are unreasonable. If the Commission is not fulfilling this function, then it follows that other action should be considered, such as substituting competition through the mechanism of eliminating antitrust immunity in areas such as small shipments, where regulatory oversight is lacking.

Separate Response of Chairman Taylor

8. In light of the Commission's obligation to assure that carriers are required to be fit, how do you reconcile that obligation with the decision not to appeal the Court's decision in the Wilkett case?

In my view, the Commission's obligation to assure that carriers are fit cannot be reconciled with the decision not to appeal the court's decision in the Wilkett case. Accordingly, I voted, along with Commissioner Gradison, to seek rehearing (not a writ of certiorari) with regard to the adverse court decision in that case.

I would point out that this action was in accordance with the recommendation of our General Counsel, who expressed the view that the court improperly reweighed the evidence in finding that the Commission had no reasonable basis for concluding that James Wilkett's drug and second-degree murder convictions indicated a predisposition on the company's part to violate trucking regulations.

The Commission found that the company was a sole proprietorship, that Wilkett had legal power to control the operations of the company, and that he in fact participated in the day-to-day management of the enterprise. The applicant did not dispute these findings. Under these circumstances, it was my view that there was no basis in the record for the court to find that the fitness of James Wilkett was severable from that of his company.

Additionally, instead of remanding the case for further consideration, the court directed the Commission to promptly issue a certificate, an action which I believe is contrary to the law governing the respective roles of an administrative agency and the reviewing court.

Separate Response of Vice Chairman Andre

8. In light of the Commission's obligation to assure that carriers are required to be fit, how do you reconcile that obligation with the decision not to appeal the Court's decision in the Wilkett case?

I believe the Court correctly decided the legal issues before it. If Congress desires the Commission to consider matters unrelated to transportation activity in determining fitness, further legislation would be required.

Separate Response of Commissioner Sterrett

8. In light of the Commission's obligation to assure that carriers are required to be fit, how do you reconcile that obligation with the decision not to appeal the Court's decision in the Wilkett case?

I voted not to grant the Wilkett application, on the basis that the applicant was unfit. While a valid legal argument can be made that Wilkett's conviction bears no relationship to his fitness under the Interstate Commerce Act to provide a transportation service, I believe that it is bad public policy for this Commission to grant a certificate in these particular circumstances. However, Wilkett appealed the decision of the Commission, and unfortunately the Court of Appeals reversed it. In my opinion, the chances of the Supreme Court granting a writ of certiorari were very slim. Thus, in order to avoid the Supreme Court establishing what I regard to be a very poor precedent based on a unique case, I thought it best not to seek further review.

Separate Response of Commissioner Gradison

8. In light of the Commission's obligation to assure that carriers are required to be fit, how do you reconcile that obligation with the decision not to appeal the Court's decision in the Wilkett case?

In my view the Commission should have sought rehearing of the Wilkett case and I voted to do so.

Additionally, upon granting Wilkett a certificate as directed by the Court of Appeals, the Commission should have issued only a limited term certificate. I voted for issuance of a certificate limited to a two-year term, which would have given the Commission an opportunity to evaluate Wilkett's willingness and ability to conduct operations in a lawful manner. This approach would also have been within the terms of the Court's order.

9. The Motor Carrier Act of 1980 created the Motor Carrier Ratemaking Study Commission. That Commission has submitted its report to the Congress and the President. The Report contained recommendations by the majority of the Commissioners, along with minority recommendations submitted by four of the Commissioners. The purpose of the Report was to supply the Congress with information on antitrust issues involving collective ratemaking.

   (a) How do you interpret those recommendations? In other words, are the recommendations viewed as being advisory or mandatory to the Commission? Please give reasons for your answer.

The Commission views the recommendations of the Motor Carrier Ratemaking Study Commission ("MCRSC") as advisory only until such time as they may be adopted by the Congress. The statute is clear that the MCRSC was to study motor carrier antitrust immunity and was to submit a report with recommendations to the President and Congress. The language cannot be interpreted to imply that the report's recommendations are binding on anyone.

10. (a) In your view, what authority does the Commission have with respect to rate bureaus? For example, do you believe the Commission has the authority to limit or eliminate the use of rate bureaus by the trucking industry, other than as specifically provided for in section 14 of the Motor Carrier Act? Would you please give reasons for your answer and indicate the specific provisions in the law that you rely upon for your answer.

The Commission's authority over motor carrier rate bureaus extends only to reviewing rate bureau agreements which may be submitted to the Commission. It should be noted that unlike the railroads, the motor carrier rate bureaus are not required to submit their agreements for such review. The advantage of Commission review, however, is that agreements which meet the requirements of 49 U.S.C. §10706(b) and which are not inconsistent with the transportation policy set forth in 49 U.S.C. §10101(a), are approved and antitrust immunity is thereafter conferred on actions taken pursuant to those agreements.

The question of the Commission's authority to limit or eliminate the use of rate bureaus by the trucking industry is being addressed in a rulemaking proceeding entitled, Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments, 48 Fed. Reg. 46399 (October 12, 1983). The rulemaking was initiated at the request of certain shippers. The rate bureaus went to court to have the proceeding enjoined as plainly in excess of our statutory authority. That request was denied as premature in American Trucking Ass'ns v. Interstate Commerce Commission, No. 83-3531 (D.D.C. Jan. 3, 1984).

We are now in the process of reviewing the comments in that proceeding. In view of the pendency of the rulemaking, it would not be appropriate to comment on this question in detail.

In general terms, however, we believe that the Commission has broad authority to review rate bureau agreements to ensure that they conform with the requirements of 49 U.S.C. §10706(b). The Commission has the responsibility, under 49 U.S.C. §10706(b)(2), to impose conditions to ensure that a rate bureau agreement, even one that "fulfills each requirement of this subsection," is not "inconsistent with the transportation policy set forth in section 10101(a)." See American Trucking Ass'ns, v. United States, 688 F.2d 1337, 1343 (11th Cir. 1982), cert. granted, 102 S. Ct. 3109 (1983). Further, 49 U.S.C. §10706(f) authorizes the Commission to review all agreements and change the conditions of approval or terminate approval, and 49 U.S.C. §10706(g) authorizes the Commission to begin such a proceeding on its own initiative or on application of a party.

10. (b) Do you believe that Congress intended in the Motor Carrier Act for the ICC to administratively eliminate antitrust immunity for motor carriers without additional guidance from Congress? On what basis have you reached this conclusion?

As indicated in question 9 of this section, the Motor Carrier Act established the Motor Carrier Ratemaking Study Commission to report to Congress and the President on collective ratemaking for motor carriers and the need or lack of need for continued antitrust immunity. The study was designed to assist the Congress in its determination as to whether further legislative changes will be necessary. There is no specific provision in the Motor Carrier Act or its legislative history that expresses Congressional intent that the I.C.C. administratively eliminate antitrust immunity. The extent of our authority in this area, based on our jurisdiction over rate bureaus (which largely predates the MCA), is being examined in a pending rulemaking, Ex Parte No. MC-172.

11. (a) Would you please comment on whether or not you would favor legislation to abolish the Commission; that is, close it down?

    (b) If you favor abolishing the Commission, do you believe any regulatory controls should be retained? If you favor retention of some controls, which agency should they be transferred to for administrative purposes?

Economic regulation of motor carriers of property is unnecessary and should be eliminated. Issues of safety and insurance for property carriers could be regulated by DOT. However, there appears to be a need for continued regulation of railroads in various areas, such as rate regulation where there is an absence of effective competition. Some continued jurisdiction in the household goods area also appears warranted in view of the special needs and problems of individual unsophisticated household goods shippers. Also, further change in the bus area would probably be premature, since reform legislation was so recently enacted.

In sum, there is a continued need for a number of the Commission's present functions. The trend toward intermodalism may argue for consolidation of the transportation regulatory bodies. That possibility and others should be studied further.

Mr. **ANDERSON**. The subcommittee will come to order.

We have at this time the witnesses from the Department of Transportation. Matthew V. Scocozza, Assistant Secretary for Policy.

The full text of your prepared statement will appear in the record at this point.

[The statement referred to follows:]

STATEMENT OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the Committee, thank you for inviting the Department here today to discuss the Administration's views on economic regulation of motor carriers.

Although the legislative reforms affecting trucks, household goods carriers, and buses have been in effect for varying lengths of time, the overall results of reform are very positive. In my statement, I would like to highlight some of the benefits of reform in each of these segments of the motor carrier industry, beginning with the impact of the Motor Carrier Act of 1980 on the trucking industry.

TRUCKING

The Motor Carrier Act of 1980 (MCA) has now been in effect for more than three years. During much of that period, the trucking industry—like most industries—has been burdened by weak demand for its services. Substantial decreases in truck tonnage levels have resulted in decreased profits and increased numbers of business failures, both in local and interstate trucking. However, throughout these difficult times, the industry as a whole has continued to provide good service to shippers and receivers throughout the nation, moving the freight wherever it is needed.

In many respects, the first volume of the truck regulatory reform story is nearly complete. With the exception of removal of antitrust immunity for single-line ratemaking, most of the basic reforms contemplated by the MCA have been implemented. We agree with the conclusions of the Motor Carrier Ratemaking Study Commission's report, which recommended the prompt removal of all antitrust immunity for motor carrier of property collective ratemaking.

In the meantime, carriers have been adjusting to a more competitive way of life. Some among them have voluntarily sought out ways to improve operating efficiency and respond better to shipper needs; many of these carriers will prosper. Others have resisted change, and for them the period of adjustment may prove more difficult.

Shippers, too, have been confronted with a new transportation environment. No longer does the shipper play a substantially passive role in the overall distribution process: many opportunities exist to shop for various price and service options, to negotiate service packages, to consolidate shipments and otherwise seek more efficient distribution strategies, and to work closely with carriers to design transportation services that best meet the shipper's overall needs. For shippers, as for carriers, transportation planning now entails substantially more than thumbing through a well-worn rate book.

The evidence we have seen during the past three years shows that shippers are happy with the results of motor carrier reform. The most recent results of a DOT sponsored multi-year survey of truck service to small communities are essentially the same as those of previous years: rural and isolated shippers continue to receive good service, with more shippers noting service improvements than deteriorations. While some shippers receive less frequent service, almost all shippers note that more carriers are competing for their business than before the MCA.

Moreover, in Florida—which totally deregulated its intrastate trucking industry in 1980—shippers seem to be similarly satisfied with the trucking service they are receiving. A DOT sponsored study of Florida truck deregulation found that both in 1981 and 1982, the vast majority of Florida shippers surveyed approved of deregulation. Most respondents in both years noted no change in overall service levels; of those who did report changes in service levels, three times as many reported improvements rather than deteriorations. A majority of respondents in both years perceived that deregulation had resulted in truck rates that were lower than they would have been under regulation.

As the members of this committee are well aware, the short-run picture is not uniformly rosy. Sharply lower truck tonnage has contributed to reduced profits for most, losses for many, and bankruptcy for some. According to the most recently available data from Dun & Bradstreet, the absolute numbers of business failures for both local and intercity trucking continued to rise sharply through the first half of 1982. These two series have moved in very similar fashion since 1978. Both local trucking—which was not substantially impacted by the Motor Carrier Act—and intercity trucking—which, of course, was—exhibited much higher levels of business failures as the economy weakened. We believe this is strong evidence that the recession has been the primary cause of these failures.

However, while overall demand for trucking services had continued to be weak, shippers are still receiving good service. The long term decline in tonnage appears to have bottomed out, and the beginning of recovery seems to be at hand. For the many carriers that have pursued cost-reduction and efficiency-enhancing strategies during the recent hard times, better times ahead will mean robust profits and the means to invest in the future.

In 1983, financial performance has improved markedly for the trucking industry, although the financial health of individual carriers continues to vary substantially. First-quarter results showed an operating profit for the top 100 group of $66 million, turning around last year's first quarter loss of $46 million. Results for the year's second quarter—typically the industry's strongest—were even more promising, with an operating profit of $220 million, an 80 percent increase over the 1982 level; and preliminary results we have seen from the third quarter show continued improvement.

Far fewer major carriers are operating at a loss compared to last year, and there have been vast improvements in the profitability of some of the largest carriers, such as Yellow Freight and Carolina Freight, as well as the apparent initial success of Arkansas Best's acquisition of East Texas Motor Freight. The four-year decline in truck tonnage appears to have now reversed, with modest increases expected to continue into 1984.

The trucking industry is finally responding to the upturn in the economy. The freedom to compete, together with the greater productivity provided by the Surface Transportation Assistance Act, gives truckers the potential for greatly improved earnings as the economy continues to strengthen.

With respect to the future, we see two especially promising long term trends: improving motor carrier efficiency through greater knowledge by carriers of their internal operating characteristics, and new ways of facilitating information flows among carriers and shippers.

With respect to the first trend, there would appear to be little disagreement between government and industry on one very important maxim for the trucking industry of the 1980's: "Know your costs!" The industry's development of personal computer software for costing individual shipments should help put necessary cost and pricing data within the reach of even small carriers.

With respect to the second trend, both computers and people are helping to meet the information needs of the trucking industry. In particular, we have observed the recent rapid growth of property brokers, who facilitate information and traffic flows by matching up carriers and shippers. Brokers have long played an important role in the transportation of exempt commodities; in the past three years they have begun to be an important factor in arranging the transportation of regulated commodities as well.

The growth of property brokerage is important to the trucking industry as a whole, but particularly so for the future of less-than-truckload (LTL) transportation. Many of the activities engaged in by brokers—such as consolidating LTL shipments into full truckloads, arranging for truckloads to be "topped off" with LTL shipments, providing marketing services for smaller carriers, and making information about a wide variety of motor carriers easily available to shippers—help encourage the maximum possible levels of competition in the movement of LTL freight. These help assure that the shipper of LTL freight will have as many alternatives as possible, not just those LTL carriers, freight forwarders, and shippers associations the shipper already happens to know about.

In addition, attitudes as well as institutions will help shape the future of the trucking industry. In the three years since enactment of the MCA, we have seen a gradual trend toward acceptance of reform on the part of industry executives. While certain segments of the industry—such as contract and private carriers—have been sympathetic to reform all along, we are beginning to see a broadening of this acceptance. A recent survey done by the Consulting Center of Marlboro, Massachusetts found that forty percent of the trucking executives surveyed no longer felt that antitrust immunity was necessary. In addition, the 1982 survey of Florida motor carriers of property undertaken for DOT showed that 47 percent of the respondents either preferred deregulation of their intrastate trucking industry or did not care one way or another. We will, of course, be glad to provide this and our other recent motor carrier studies to this Committee.

Finally, we have seen no valid statistical evidence linking deregulation with the safety performance of the trucking industry. Nevertheless, the Secretary has made it clear that highway safety is one of her highest transportation priorities, and motor carrier safety regulation will be given a greater degree of attention than it has received in the past. In this regard, the Department is moving rapidly to implement the recently enacted five-year program of grants to the States for increased enforcement of truck and bus safety. Under this program, endorsed by the Administration, the States are now preparing applications for funding and should begin receiving substantial sums to improve safety enforcement as of January.

In summary, as the Department also testified last year, we believe that trucking reform is working well. Through difficult times, the industry has responded to economic regulatory reform in the ways intended by the Congress: by the creation of new carriers and the expansion of existing carriers into new markets, by the provision of a wide variety of new price and service options to shippers, and by a continuing search for more efficient operating techniques, all leading to lower rates for shippers and savings to consumers. As tonnage levels begin to improve, we believe that those carriers who have best adapted to the new, more competitive environment will begin to reap the economic rewards of their actions.

HOUSEHOLD GOODS

During the past three years, household goods carriers have been operating in the more flexible, more competitive environment provided by the reforms of the Household Goods Transportation Act of 1980 (Household Goods Act), as well as those of the Motor Carrier Act of 1980 (MCA). I am pleased to report that reform is also working well in the household goods sector.

The evidence we have seen strongly suggests that households goods carriers have taken advantage of both sets of legislative reforms to streamline their operations and provide shippers with new and improved services, as well as engaging in more competitive pricing. For example, binding estimates and guaranteed pickup and delivery have proven especially popular with consumers. These two practices were specifically authorized by the Household Goods Act. In addition, the greater pricing flexibility provided by the MCA has encouraged independent action with regard to household goods carriers' rates.

Between 1980 and 1982, household goods carriers' performance improved in a number of dimensions besides pricing. In particular, Interstate Commerce Commission (ICC) data show an improvement in the percentage of shipments delivered on time and a decline in the average number of days required for carriers to settle claims. The average percentage of shipments delivered on time rose from 92 to 96 percent, while the average number of days required to settle claims declined from 24 to 20 days. More competition, more operating flexibility, and the right to guarantee good service have had had the effect intended by Congress: household goods customers are getting better service. Throughout difficult economic times, the household goods industry has improved its reputation for quality, and is to be commended for its efforts.

As was also the case for the trucking industry in general, the past year was one marked by depressed tonnage for household goods carriers. However, we are now seeing signs of recovery for these carriers as the overall economy improves. The Interstate Commerce Commission reported a slight increase in tonnage hauled by the major household goods carriers in the second quarter of 1983 (excluding North American Van Lines, Inc., whose substantial general freight operations make data comparability difficult), and about a 20 percent increase in quarterly net income for these carriers over 1982. For the year ended June 30, the carriers reported an improvement in average operating ratio and return on equity, although tonnage was down for the twelve month period as a whole. All but two of these major carriers included in the ICC report showed profits for the year, and the average return on equity for the group was nearly 16 percent.

As a group, the major household goods carriers continued to be more profitable than other large trucking firms. This is not meant to imply that all carriers in the industry are doing well. We have yet to receive the results of our recent survey of small Class III motor carriers of property, and to analyze the impact of the reforms and the recession on them. We expect to have those results available by the end of the month.

Finally, although many of the reforms intended by the Household Goods Act have been very successfully implemented, we believe that there is one important area where much more could be done—the reduction of paperwork burden. The past three years have demonstrated that increased competition and operational flexibility can do a good job of ensuring that consumers' moving needs are well met, and we understand that the Interstate Commerce Commission is planning to take another look at its extensive regulations for household good carriers, in order to further reduce paperwork burden and promote greater operational flexibility whereever feasible.

The ICC revised these regulations soon after enactment of the Household Goods Act. However, because of court review, the revised regulations did not take effect until February 1, 1982. Members of the moving industry, who deal with these rules on a day-to-day basis, have made clear that relatively little paperwork burden has yet been removed from their operations. For example, last year the National Moving and Storage Association reported to Congress that over 80 percent of the respondents to its survey had observed no decrease in the paperwork burdens they faced. The evidence to date suggests that guarantees, service options, and competitive rates offered by carriers themselves—rather than the heavy hand of regulation and its associated paper shuffling—have been the best means to provide consumers with quality household goods service.

In summary, we believe that reform is working well and that, as the economy continues to recover, the many carriers who have already taken measures to improve their efficiency and responsiveness to consumer needs will begin to see those efforts rewarded by enhanced profits.

BUSES

Although only a year has passed since the implementation of the Act in November 1982, the trends we see are very encouraging. The available data sugggest that while route and service point adjustments are certainly taking place within the industry, the entry and exit provisions of the Act are working nicely in tandem to smooth temporary service dislocations.

The small communities of rural America, some of which are being impacted by service adjustments made possible under the exit provisions of the Act, are also the beneficiaries of the new freedom granted to carriers by its entry provisions.

Entry.—By the first of July there had been approximately 1,600 applications for operating authority published in the Federal Register since the implementation of the Act. Some 168 of these involve applications for regular route authority. In the years 1976–1980, by comparison, regular route applications averaged only 40 per year. The current regular route applications include hundreds of existing and new service points and encompass approximately 34,000 route miles.

As an example, a carrier has opened a new route stretching completely across western Kansas from north to south serving 25 communities. The nearest comparable north-south route was previously about 50 miles to the east of these communities. A recent issue of the Federal Register contained this same carrier's application for significantly expanded regular route authority in Kansas, Missouri, and Nebraska. This carrier, utilizing mini-buses and vans where full sized coaches would be impractical because of light population density, recently indicated that "We're expanding like crazy using smaller equipment—8 to 21 passenger capacity. . . .". The carrier has indicated it will soon be operating 4,000 miles a day of intercity service to 137 communities in low density population areas, and expects to receive 91 percent of its revenue from these routes.

In rural Wisconsin a new carrier has obtained authority to operate a route slated for discontinuance by a large carrier and is operating additional new routings from the same area to Chicago which do not parallel those of the existing carrier. Another existing bus company recently opened a route from New York City through western New England over a route discontinued some months previously by another carrier, and has increased service to five trips daily in each direction, compared to the previous carrier's two; moreover, it has now, after several months, applied for authority to extend this primarily rural route even further. Extensive filings for new route authorities have also been made in western Massachusetts and Connecticut. An existing small carrier has applied for a major grant of regular-route authority throughout the South, encompassing routes in Virginia, North Carolina, South Carolina, Tennessee, Georgia, and Florida. These routes include many small communities as well as major metropolitan areas. This carrier has begun operating portions of its new grant of authority, although terminal access appears to be inhibiting it in some areas.

Applications across the country encompass many rural communities, including both those with existing service and those having no previous service. New applications to replace existing services of carriers discontinuing service points are not only providing for the continuation of services where there is demand, but some of these replacement services are actually providing more trips and serving more points along, and adjacent to, the old route of the original carrier.

A national carrier discontinued a route from New York City, through New Jersey, Pennsylvania, and Ohio; but the route has now been taken over by three separate regional carriers, with virtually all portions of the route receiving as much or more service than the national carrier was operating at the time it discontinued the service. In upper New York State, a route discontinuance between Utica and Watertown announced by a major carrier resulted in two carriers requesting authority over the route. One of these carriers has begun service, with New York State financial assistance, and is serving some 15 rural service points along this route, as compared with only four served by the former carrier.

Applications for authority to operate "replacement" intercity regular route service have been noted in filings with the ICC for approximately one half of the states. It should also be noted that these statistics do not include entry activity taking place at the state level. Since many applications for exit are for what are, in reality, intrastate route segments, new entrants on such segments might well initially apply at only the state level, and would not appear in the ICC records we have been monitoring.

Exit.—Shortly after implementation of the Act, there was significant publicity surrounding the announcement of a seemingly large number of service point discontinuances. Since that announcement, there have been applications by other carriers to assume some of these points; local subsidy has been extended in certain areas while lower-cost carriers are sought. In many cases new carriers have not entered because the original carriers have continued to operate while negotiating with state and local authorities.

An examination of proposed points for discontinuance in California revealed that approximately half of the points had existing alternative service and many more are points that have generated or received little or no traffic for a long time. I believe this type of "non-service point" deserves somewhat more discussion because of the recent publicity regarding bus service abandonment.

It is important to analyze the definitions which apply to intercity bus service points which have been discontinued or are proposed for discontinuance by various carriers. There are primarily two types of stops listed on any given carrier's schedule. These are "flag stops" and "time points" with or without any terminal or station facility. The "flag stop" is used to indicate that a bus will pass at a time between the two bracketing schedule times and, if signaled, will stop. Flag stops are only used at points where traffic has declined to a very low level or is non-existent. "Time points" are used to indicate the time that a bus might be expected to arrive at a particular point. Normally buses are expected to stop at a time point to receive passengers. However, much like flag stops, time points have been carried on schedules long after agency facilities have closed for lack of business, patronage patterns have altered, and even the original reason for the stop, such as a hotel or some other traffic generator, has long ceased to exist. At one time it was a common practice to have more than one stop, with or without facilities, in many communities. As the nature of intercity bus travel and the needs of its passengers have changed, many of these multiple urban stops have become redundant. In some cases, shifts in population and industrial areas have removed their possible clientele.

Many flag stops and time points have been carried on schedules for years without any traffic being received or discharged at the particular place. This is especially true if, under a particular State regulatory scheme, it was necessary to expend much time, money and effort for discontinuance, such as for notices or public hearings. These points may have been only "served" by one trip a day, or even fewer, but the fiction of their existence as "service" was maintained by regulation rather than utilization. The necessity for self-examination and the new freedom brought to the carriers by the implementation of the Act appear to have finally overcome the inertia inhibiting removal of these so-called service points. Thus, much of the service point discontinuance that has been publicized since the implementation of the Act is not really the abandonment of today's service, but only the overdue adjustment of a system evolving from one based on yesterday's needs.

In 1984, the Department plans to undertake a thorough study of exit and entry at the state level, to supplement the national data already being analyzed on a continuing basis as part of the DOT's monitoring of the impact of the Bus Act.

Terminal access.—A problem for some new carriers seeking to enter a market, and one which indirectly may also impact exit, is terminal access. Information provided by some new entrants through conversations with DOT personnel and contained in initial data being received under the DOT/ICC Intercity Bus Terminal Survey, mandated in the Bus Act, indicates that terminal access may be an impediment to some new carriers. The major carriers appear very reluctant to permit any new carriers into their facilities. These include, in some instances, even those new entrants who are taking over routes discontinued by the selfsame major carriers. Copies of correspondence supplied by new carriers indicate this policy was in place even prior to the actual passage of the Act. We have heard allegations that both major carriers have refused new entrants access to their facilities in potentially competitive, and service replacement situations as well as where services do not compete. A number of new entrants and potential new entrants have stated that the lack of facilities and the lack of the capability to interline with major carriers, both effected through terminal access, is seriously affecting their expansion plans. We are continuing our study of this issue as mandated by the Bus Act and will send you a definitive analysis by the end of the year in the Bus Terminal Study.

INTERSTATE AND INTRASTATE FARES

We are pleased to note that head-to-head fare competition, wherein a number of carriers compete between common points, is beginning to emerge both at the interstate level and at the intrastate level in deregulated states. Intermodal fare competition is becoming more prevalent among bus, air, and rail carriers on routes in the 100–300-mile range. Competitive fare setting, which had been virtually unheard of in this industry, but is now emerging on the intrastate level in deregulated states such as Florida and Arizona, includes such innovations as time-of-day or peak/off-peak fares, and head-to-head competition at both the intermodal and intramodal levels. Peak/off-peak fares are not only cost-based because they allocate more costs to those who prefer to travel at periods of high demand (necessitating higher capacity and resultant higher costs), but also reward the more flexible traveler (including persons over 60) who can take advantage of service provided during off-peak periods when costs are lower.

Since the implementation of the Act, with its elimination of single-line immunity, fares in a number of markets around the country have declined. Single-line fares have declined in these markets; moreover, the fares of different carriers serving a given market are no longer necessarily identical, as they traditionally have been under collective ratemaking. Experience with non-collectively set fares in major markets under the deregulated environment of Florida has reflected similar results. However, this has not occurred in the area of interline fares, which have continued to rise and are still set through general rate increases in the collective ratemaking process.

IMPACT OF PROMOTIONAL AND SPECIAL FARES UPON THE GENERAL RATE STRUCTURE

Early indications from intrastate traffic in deregulated states and interstate traffic under the Act suggest that promotional and special fares will have a significant impact in many area and, in fact, may become the only fares charged in the more highly competitive markets.

Examination of intrastate fares in Florida under total deregulation reveals several fares being offered between given city pairs. These fares, based on both demand related to time of day on the one hand, and perceived competition on the other, provide the potential passenger with two or three fare choices between many city pairs. At the interstate level, fare competition is also appearing in many areas. One major carrier has filed a tariff with the ICC permitting the carrier to refund the difference between its fare and any lower fare offered by a common carrier of any mode, between points common to them both.

At the present time, both major carriers and their subsidiaries sell a pass-type ticket which is similar in concept to the Eurail pass. Although it is normally honored only by its selling carrier group, i.e., the Greyhound pass is honored only by Greyhound, and Trailways' by Trailways, exceptions do exist in this arrangement to the extent that both carriers will honor such a pass in areas where only one of them operates. Such promotional or special fares are the epitome of independent action. Thus, as antitrust immunity is reduced, these special fares are likely to proliferate. They will have the greatest impact in the more competitive high-traffic areas, but also in the pass-type tickets used primarily by vacation travelers, many of whom would probably be elderly.

INNOVATION AND ENTREPRENEURSHIP

In numerous ways, the implementation of the Act has produced a flourish of innovation activity in an industry not noted for innovation. We have already cited examples of new rural routes utilizing equipment more precisely adapted to the demands of the traffic rather than the "traditional" size of bus operated on most routes. Fare competition and innovation are being tried by many carriers. It is interesting to note that innovation is not the sole province of the new entrant. Established carriers in both the regular route and charter field are making use of their new freedom to compete. A long-established carrier in the middle-Atlantic states has filed an innovative charter tariff which provides flexibility in competition not previously available to it. A large mid-western intercity bus firm has begun franchising new carriers. The new franchising service provides potential new operators with training, advice, financing, insurance, maintenance, assistance in obtaining regulatory permits, and some general paperwork handling. The service is targeted toward new entrants whether they are new carriers or communities desiring to develop new or replacement services in their region.

CONCLUSION

In summary, we believe strongly that so far the entry and exit provisions of the Bus Regulatory Reform Act are working smoothly to preserve intrastate and interstate service levels, while encouraging innovation and entrepreneurship within the industry, and that the industry is making a smooth transition to independent ratemaking without antitrust immunity. In addition, the substantially longer experience with truck and household goods reform shows that reform is working well in these areas. We encourage the ICC to seek out additional opportunities to reduce paperwork burden on carriers, especially household goods carriers.

That concludes my prepared remarks, Mr. Chairman. I will now be glad to answer any questions that you or other members of this Committee may have.

Mr. ANDERSON. Please proceed.

TESTIMONY OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY DR. VICTORIA DAILEY, DR. GARY BROEMSER AND DR. EDWARD RASTATTER, OFFICE OF POLICY, DEPARTMENT OF TRANSPORTATION.

Mr. SCOCOZZA. Thank you, Mr. Chairman.

To my extreme right is Dr. Victoria Dailey, to my immediate right, Dr. Gary Broemser. To my left, Dr. Edward Rastatter, all from the Office of Policy within the Office of the Secretary of the Department of Transportation.

Mr. Chairman, thank you for inviting the Department here today to discuss the administration's views on economic regulation of motor carriers.

Although the legislative reforms affecting trucks, household goods carriers and buses have been in effect for varying lengths of time, the overall results of reform are very positive. In my statement, I would like to highlight some of the benefits of reform in each of these segments of the motor carrier industry, beginning with the impact of the Motor Carrier Act of 1980 on the trucking industry.

The Motor Carrier Act of 1980 has now been in effect for more than 3 years. During much of that period, the trucking industry, like most industries, has been burdened by weak demand for its services. Substantial decreases in truck tonnage levels have resulted in decreased profits and increased numbers of business failures, both in local and in interstate trucking. However, throughout these difficult times, the industry as a whole has continued to provide good service to shippers and receivers throughout the Nation, moving the freight wherever it is needed.

Shippers, too, have been confronted with a new transportation environment. Many opportunities exist to shop for various price and service options, to negotiate service packages, to consolidate shipments and otherwise seek more efficient distribution strategies and to work closely with carriers to design transportation services that best meet the shippers' overall needs.

The evidence we have seen during the past 3 years shows that shippers are happy with the results of motor carrier reform. Rural and isolated shippers continue to receive good service, with more shippers noting service improvements than deteriorations. Moreover, in Florida, which totally deregulated its intrastate trucking industry in 1980, shippers seem to be similarly satisfied with the trucking service they are receiving.

As the members of this committee are well aware, the shortrun picture has not been uniformly rosy. However, there is strong evidence that the recession has been the primary cause of increased business failures in trucking. The long term decline in tonnage appears to have bottomed out, and the beginning of recovery seem to be at hand. For many carriers that have pursued cost-reduction and efficiency-enhancing strategies during the recent hard times, better times ahead will mean robust profits and the means to invest in the future.

With respect to the future, we see two especially promising long term trends: Improving motor carrier efficiency through greater knowledge by carriers of their internal operating characteristics and new ways of facilitating information flows among carriers and shippers.

For example, the industry's development of personal computer software for costing individual shipments should help put necessary cost and pricing data within the reach of even small carriers. We have also observed the recent rapid growth of property brokers, who facilitate informational and traffic flows by matching up carriers and shippers. Brokers have long played an important role in the transportation of exempt commodities. In the past 3 years, they have begun to be an important factor in arranging the transportation of regulated commodities as well.

In addition, attitudes as well as institutions will help shape the future of the trucking industry. In the 3 years since passage of the Motor Carrier Act, we have seen a gradual trend toward acceptance of reform on the part of industry executives. While certain segments of the industry, such as contract and private carriers, have been sympathetic to reform all along, we are beginning to see a broadening of this acceptance.

Finally, we have seen no valid statistical evidence linking deregulation with the safety performance of the trucking industry. Nevertheless, the Secretary has made it clear that highway safety is one of her highest transportation priorities, and motor carrier safety regulation will be given a greater degree of attention than it has received in the past.

During the past 3 years, household goods carriers have been operating in the more flexible, more competitive environment provided by the reforms of the Household Goods Transportation Act of

1980 as well as the Motor Carrier Act of 1980. I am pleased to report that both sets of reforms are working well in the household goods sector.

Household goods carriers have taken advantage of these legislative reforms to streamline their operations and provide shippers with new and improved services as well as engaging in more competitive pricing.

Between 1980 and 1982, household goods carriers' performance improved in a number of dimensions besides pricing. In particular, Interstate Commerce Commission data show an improvement in the percentage of shipments delivered on time and a decline in the average number of days required for carriers to settle claims. More competition, more operating flexibility and the right to guarantee good service have had the effect intended by Congress. Household goods customers are getting better service. Throughout difficult economic times, the household goods industry has improved its reputation for quality and should be commended for its efforts.

As it was for the trucking industry in general, the past year was one marked by depressed tonnage for household goods carriers. However, we are now seeing signs of recovery for these carriers as the overall economy improves. While the major household goods carriers have continued to be more profitable than other large trucking firms, we have yet to analyze the impact of the reforms and the recession on small class III motor carriers. We hope to have preliminary results of our recent survey by the end of November 1983.

Finally, although many of the reforms intended by the Household Goods Transportation Act have been very successfully implemented, we believe there is one important area where more work could be done, the reduction of the paperwork burden. The evidence to date suggests that guarantees, service options and competitive rates offered by carriers themselves, rather than the heavy hand of regulation and its associated paper shuffling, have been the best means to provide customers with quality household goods service. Consequently we believe that the time is right for the ICC to institute a new approach to this area of household goods regulation.

In the bus area, although only a year has passed since the implementation of the Bus Regulatory Reform Act of 1982, the trends we see are very encouraging. The available data suggest that while route and service point adjustments are certainly taking place within the industry, the entry and exit provisions of the act are working in tandem nicely to smooth temporary service dislocations.

By the 1st of July there had been approximately 1,600 applications for operating authority published in the Federal Register since implementation of the act. Some 168 of these involve applications for regular route authority. In the years 1976 through 1980, by comparison, regular route applications averaged only 40 per year. The current regular route applications include hundreds of existing and new service points and encompass approximately 34,000 route miles.

The ICC has already received applications for authority to operate "replacement" intercity regular route service in approximately one-half of the States. These statistics actually understate entry since they do not include entry activity taking place at the State level.

Shortly after implementation of the act, there was significant publicity surrounding the announcement of a seemingly large number of service point discontinuances. However, there have been applications by other carriers to assume some of these points; local subsidy has been extended in certain areas while lower cost carriers are sought; and in many cases, the original carrier continues to operate while negotiating with State authorities.

Many of these points have been carried on schedules for years without any traffic being received or discharged. Others have only been served by one trip a day or even fewer. The fiction of their existence as service was maintained by regulation rather than utilization.

Head-to-head fare competition is beginning to emerge both at the interstate level and at the intrastate level in deregulated States, and intermodal fare competition is becoming more prevalent among bus, air, and rail carriers on routes in the 100 to 300 mile range.

Since the elimination of single-line antitrust immunity, fares in a number of markets around the country have declined. In addition, the fares of different carriers serving a given market are no longer necessarily identical, as they traditionally had been under collective ratemaking. However, this has not occurred in the area of interline fares, which have continued to rise and are still set through general rate increases in the collective ratemaking process.

The implementation of the act has produced a flourish of innovative activity. Equipment more closely adapted to the routes operated, competitive and innovative fares, and the provision of "turn key" bus systems to new operators are only a few.

To sum up, Mr. Chairman, we believe strongly that so far the entry and exit provisions of the Bus Act are working smoothly to preserve intrastate and interstate service levels, while encouraging innovation and entrepreneurship within the industry, and that the industry is making a smooth transition to independent ratemaking without antitrust immunity. In addition, the substantially longer experience with truck and household goods reform shows that reform is working well in these areas. We encourage the ICC to seek out additional opportunities to reduce the paperwork burden on carriers, especially household goods carriers. As the economy continues to recover, the many household goods carriers and other carriers who have already taken measures to improve their efficiency and responsiveness to consumer needs will begin to see those efforts rewarded by enhanced profits.

That concludes my prepared remarks, Mr. Chairman. I will now be glad to respond to any questions you may have.

Mr. **Anderson**. Thank you, Mr. Scocozza for your presentation. On page 2 of your statement, you state:

> We agree with the conclusions of the Motor Carrier Ratemaking Study Commission's report, which recommended the prompt removal of all antitrust immunity from motor carrier of property collective ratemaking.

My question is do you believe that legislation is required in order to carry out that recommendation, and please explain your answer.

Mr. SCOCOZZA. Mr. Chairman, with respect to your question, I will try to answer it as best I can. With respect to the current proceeding at the Interstate Commerce Commission, the Department of Transportation would generally concur that the Interstate Commerce Commission does have the right to review agreements, whether to approve them or reject them on the basis of the national transportation policy.

With respect to the total removal of single-line antitrust immunity, I think the statute makes it clear that that is scheduled for July 1, 1984.

Mr. ANDERSON. On page 6 of your statement, you state:

> The Department is moving rapidly to implement the recently enacted 5-year program of grants to the States for increased enforcement of truck and bus safety. Under this program, endorsed by the administration, the States are now preparing applications for funding and should begin receiving substantial sums to improve safety enforcement as of January.

My question is: Could you give us some more specifics on how this program is being implemented and how many States might qualify for the program?

Mr. SCOCOZZA. Mr. Chairman, I believe you are talking about the Surface Transportation Assistance Act of 1982. That program is in its implementation stage at this particular point. I would be glad to provide the committee with a detailed analysis of the number of States that have applied and the types of programs to which the funds will be applied.

Mr. ANDERSON. For the record, we would like to have you make a more complete statement on that.

Mr. SCOCOZZA. We do expect the first actual grants to be made in early January, but I do not have with me those particular States or the specifics of those grants. I will provide additional information.

[The following was received for the record from Mr. Scocozza:]

ADDITIONAL INFORMATION FROM ASSISTANT SECRETARY SCOCOZZA

On August 31, the Department of Transportation announced in the Federal Register the interim procedures and guidelines which states were to follow in order to apply for fiscal year 1984 Commercial Vehicle Safety Enforcement Grants authorized by Sections 401-404 of the Surface Transportation Assistance Act of 1982. The Grant Program, entitled the "Motor Carrier Safety Assistance Program" (MCSAP) by the Department, originally stipulated that State applications for either development or implementation funding were to be submitted to FHWA's Division Office not later than October 30, 1983. On October 19, the submission date was extended to November 30, 1983. Despite this additional period allowed for State application preparation, a January forecast for awards is currently being sustained. It is anticipated development grants will be awarded initially with the implementation type grants following shortly thereafter.

An informal survey of States indicates that of the 56 potential applicants, (States and other eligible U.S. territories) 47 have declared that the applications will be submitted. It is anticipated that 27 states will request development funds and 20 will submit State Enforcement Plans for approval of an Implementation Grant. The final number of grants awarded will be determined subsequent to review and approval.

Mr. ANDERSON. On the Bus act, a fair characterization of your comments would seem to be that it is working well. From that, is it fair to conclude that the Department would not favor amending the Bus act now, or in the near future?

Mr. SCOCOZZA. I think that is correct, Mr. Chairman. We have had less than 1-year of real experience with the Bus act. I would like to point out, and I will provide more detailed information for the record, a study that is being done for the Department of Transportation by Indiana University. The study will include an intense review of six States: several States that have a highly regulated intrastate system, several which have deregulated their intrastate systems and several which employ moderate intrastate regulation. We hope through the Indiana University study, sponsored by the Department, to have a good analysis of how the Bus Deregulation Act is actually working.

Our best judgment, from the information that we have, which is somewhat limited, and on the basis of small surveys, is that the Bus act is working and working well to the benefit of carriers as well as consumers.

[The following was received for the record from Mr. Scocozza:]

INDIANA UNIVERSITY BUS STUDY

The study proposal of Professor Clinton V. Oster of Indiana University received our highest rating of all of the bus regulatory reform proposals submitted to the 1983 University Research solicitation. It proposes to examine changes in the bus service leading up to and following enactment of the Bus Regulatory Reform Act of 1982 (BRRA), with the following objectives:

1. To determine if small communities had suffered service losses prior to passage of the Act and if service losses and/or gains have occurred after the Act;
2. To assess the need, if any, for subsidies to maintain small community bus service and, if such a need is found, to develop appropriate subsidy mechanisms to avoid unintended and undesirable consequences;
3. To the extent feasible, to assess the impact of service changes on special groups, such as the elderly.

The principal methodology of the study will be a systematic comparison of service and fare data for several years prior to and following passage of the BRRA. These comparisons will be made for six or more states, including Florida and Arizona, both of which have totally deregulated their intrastate bus industries. The other states will be selected to reflect varying degrees of regulation.

The comparisons will identify and characterize abandonments, new service initiations, significant service level changes, and significant fare changes. Comparisons will be made on a yearly basis (e.g., June 1979 versus June 1983) so that service adjustments made in response to seasonal patterns in demand will not be mistaken for changes due to regulatory reform. Once these changes have been identified, they will be related to carrier, community, and demographic factors, using appropriate statistical techniques.

A final report is due December 1984, although draft results may be available sometime in September 1984.

Mr. ANDERSON. Mr. Sunia.

Mr. SUNIA. No questions, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Scocozza, for your presentation. We appreciate it very much.

Mr. SCOCOZZA. Thank you, Mr. Chairman.

Mr. ANDERSON. Our next witness, from the Department of Defense, is Brig. Gen. Archer L. Durham, U.S. Air Force, Vice Commander of the Military Traffic Management Command.

General, the full test of your prepared statement will appear in the record at this point.

[The statement referred to follows:]

Statement of Brig. Gen. Archer L. Durham, USAF, Vice Commander, Military Traffic Management Command, on Behalf of the Department of Defense

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before the Committee to make a statement and answer your questions regarding the "Household Goods Transportation Act of 1980." I am the Vice Commander of the Military Traffic Management Command (MTMC). One of the Command's functions is to manage household goods shipments worldwide for the military and civilian personnel of the Department of Defense (DOD). The DOD relies on commercial carriers for this transportation and has a responsibility to comply with the Act and promote policies which further the Act.

The DOD is the Nation's largest single shipper of personal property with 955,000 shipments moved in fiscal year 1983 at a cost of over one and one-half billion dollars. Due to the magnitude of the personal property program, the DOD has established procedures for the selection of carriers, distribution of traffic computation of charges, and quality control. The DOD uses those carriers with operating authority from the Interstate Commerce Commission (ICC). This traffic is distributed in such a manner as to reward carriers who provide quality service at low cost. The costs to DOD are derived from rates submitted voluntarily by commercial carriers under Section 10721 of the Interstate Commerce Act. A program of this magnitude requires effective control at both the local and national level.

Our goal in managing this program is to obtain the highest quality service possible at the lowest overall cost to taxpayers. Accomplishing this goal is a delicate task, due to the moral implications of moving members' personal possessions successfully within budgetary restraints. The quality of personal property moves has a direct effect on the quality of life of servicemembers and their families. Good moves keep families happy and contribute to the reenlistment and retention of our highly trained people within each of the military services. Recent improvements in the program are reflected in a current downward trend in the number of complaints from servicemembers. It is an important program which requires continuous and intensive management.

The Household Goods Transportation Act of 1980 has had a considerable impact upon the moving industry. Of particular significance to the Defense Department are those provisions which foster competition, emphasize protection of shippers, and reduce unnecessary regulation. Since passage of the Act, MTMC has undertaken several independent actions directly with individual carriers. Currently, MTMC is proposing another such action by modifying the procedures we currently use to acquire rates for the interstate shipment of household goods.

Our proposed modification entails issuance of an MTMC solicitation which contains baseline transportation rates, additional service rates, and uniform rules which carriers can use for independent pricing. There are two major reasons, each equally important, for the proposed modification. The first is the significant advantages which will lie in DOD's control over and management of its own solicitation document. The second reason is that MTMC's use of its own solicitation document will bring DOD household goods transportation procurement much more in line with federal procurement regulations and policies. I will address each of these reasons separately and will be happy to answer any questions.

HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

Our solicitation will comply with the spirit and letter of deregulation legislation through fostering competition by independent carriers action, and reducing paperwork.

The solicitation contains no tonnage incentive provisions, but relies upon marketplace competition to establish rates, which is common to free enterprise. Carriers now may submit any "percentage of" the baseline rates contained in our solicitation. MTMC's filing instructions are unique among procurement methods in that a carrier not only is permitted to specify his own rates during the rate submission period, but also may agree to provide service at another carrier's rates during the rate equalizing period, and share equally in the tonnage awarded at that rate level. This policy has been employed by MTMC in other household goods transportation programs. It helped to foster a healthy moving industry during a period of recession when commercial sector movements were declining, and allowed individual carriers to exercise maximum traffic management flexibility in offering rates which were cost effective to the DOD but still profitable for the carriers.

Our solicitation will also reduce paperwork by replacing, at a minimum, three publications issued by three separate rate bureaus and, at a maximum, up to 657 publications issued by individual carriers.

CONTROL AND MANAGEMENT

Under the Armed Services Procurement Act (10 U.S.C. SS 2301-2316), we are required to stress competition in the procurement of services for the DOD, and to make awards which will be most advantageous to the United States, with due consideration to price and other factors.

The issuance of a government solicitation, such as the one proposed by MTMC in this instance, conforms to federal procurement policies. I know of no other federal procurement programs which purchase services through an intermediary which collectively sets rates with some form of immunity from the antitrust laws. In the interest of increasing competition DOD must acquire rates for these services under procedures which are more in line with those used by other agencies procuring competitive services directly from individual firms.

MTMC has been challenged by the household goods carrier industry for our policy regarding the correct weight to be used when household goods shipments are reweighed. We believe that the correct and accurate weight of a reweighed shipment is the lower of the two weights, and we pay the carrier on the basis of that lower weight. The ICC's rules, on the other hand, permit carriers to bill on the basis of the second weighing, whether it is higher or lower than the original weight. The ICC, on its own initiative, reviewed our policy and ruled that DOD does have the legal right to use its own reweigh rule. This ruling was subsequently upheld in federal court. MTMC's concern is to procure quality moving services for DOD members. Obtaining accurate shipment weights is an important part of that service. Not only does our reweigh program protect service members from paying additional charges, but it also benefits the Government and taxpayers. It increases the morale of our members, and saved the government an estimated 3.1 million dollars in additional costs in fiscal year 1982 alone. The program is working and we have had no complaints from individual carriers of problems in reweighing DOD personal property shipments.

CONCLUSION

The Household Goods Transportation Act of 1980 has had a positive impact on DOD. It has increased competition, helped to protect the government as a shipper, and reduced unnecessary regulation. Carriers are permitted to market their services aggressively, providing desirable opportunities for both carriers and shippers. Carriers now have the flexibility to provide good service to individual shippers and meet specific demands for quality and price. The Act encourages shippers to deal more directly with individual carriers, and offers a unique opportunity for increased competition. These factors enhance the Defense Department's ability to procure quality transportation services at a reduced cost to the taxpayer. We believe the Act fosters competition and improved service.

Mr. Chairman, thank you for this opportunity to present a statement to the Committee. I will be happy to answer any questions.

Mr. **ANDERSON**. Please proceed.

TESTIMONY OF BRIG. GEN. ARCHER L. DURHAM, U.S. AIR FORCE, VICE COMMANDER, MILITARY TRAFFIC MANAGEMENT COMMAND, ACCOMPANIED BY ROBERT WALDMAN, DEPUTY DIRECTOR, PERSONAL PROPERTY AND MICHAEL GIBONEY, ATTORNEY, MILITARY TRAFFIC MANAGEMENT COMMAND

General **DURHAM**. Thank you, sir. I would like to introduce the two gentlemen at the table with me, Mr. Robert Waldman and Mr. Michael Giboney, both of the Military Traffic Management Command.

The Department of Defense appreciates this opportunity, Mr. Chairman, to make a statement and answer questions regarding the Household Goods Transportation Act of 1980. MTMC operates the worldwide household goods program for the Department of Defense. It establishes programs and policies, centrally negotiates all rates and continuously monitors the program.

The military services execute the program through their 271 shipping offices around the world, following the policies, regulations, and the procedures established by the Military Traffic Management Command.

The detailed statement that I have submitted for the record presents a synopsis of the Defense Department's experiences with the moving industry since the passage of the Household Goods Transportation Act of 1980.

The three stated purposes of the act have assisted the Department of Defense in saving taxpayer dollars while providing the best possible moving service for the military member. These purposes are fostering competition, protecting shippers and reducing unnecessary regulation.

These areas are addressed specifically in the statement, and general comments concerning deregulation are also offered.

The Defense Department has experienced more rate competition among the carriers since the passage of the act. Individual carriers are taking more independent action in their dealings with the Department.

MTMC is currently proposing that they take further independent action by issuing its own rate solicitation. This proposal complies with the letter and spirit and intent of the Household Goods Transportation Act of 1980 by promoting independent pricing, protecting the shipper, and reducing paperwork.

The DOD reweigh program is also working. It benefits the Government, the taxpayer and most importantly the service member. Individual carriers appear to be satisfied and we have avoided approximately $3.1 million in additional costs this year by utilizing our own reweigh rules.

In conclusion, the Household Goods Transportation Act of 1980 has fostered competition, provided protection for the shipper and enabled individual carriers to operate in an independent manner. Most importantly, it has enhanced the Department of Defense's ability to procure quality moving services at the lowest overall cost to the taxpayer.

Sir, we appreciate the opportunity to appear before you and the committee today, and we will be happy to answer any questions at this time.

Mr. ANDERSON. Thank you, General Durham, for your presentation. General, can you estimate how many people are engaged in the management of household goods traffic in your headquarters and MTMC field activities as well as the number of personnel working at the installation level as transportation officers and inspectors and support personnel?

General DURHAM. We can give you an estimate, Mr. Chairman, and we would like to give you a precise figure for the record, but I would ask Mr. Waldman to speak on that.

Mr. ANDERSON. Why do you not give us an estimate, and then give us the precise figures for the record.

Mr. WALDMAN. Yes, sir. We have about 60 people in the Personal Property Directorate at headquarters. There are probably somewhere in the neighborhood of 25 to 30 in each of our area commands, the eastern area in Bayonne, N.J., the western area in Oakland, Calif.

[Additional information received from General Durham follows:]

There are sixty employees engaged in the management of household goods traffic at Headquarters, Military Traffic Management Command (MTMC). There are forty-seven employees in this field at the MTMC Eastern Area, seventeen in the MTMC Western Area, twelve in the MTMC, Field Office-Europe, and four in the MTMC, Field Office-Pacific.

Mr. **Anderson**. How many area commands?

Mr. **Waldman**. Two area commands.

Mr. **Anderson**. Twenty-five east and 25 west?

Mr. **Waldman**. Yes, sir. Then about 10 people in the field office in Europe in Stuttgart, Germany, and four people at Camp Smith, Hawaii.

Mr. **Anderson**. Now, is that in addition to the 60.

Mr. **Waldman**. Yes, sir, that is in addition.

Mr. **Anderson**. So it is 60 plus another 54.

Mr. **Waldman**. It would be 25, 25, 10, and 4. We do not operate the personal property shipping offices around the world. There are almost 300 of them. They are operated by the individual military services. I will have to get the figure for you on that. I have no idea. They are not MTMC employees.

[The following was received for the record:]

DEPARTMENT OF THE ARMY
HEADQUARTERS
MILITARY TRAFFIC MANAGEMENT COMMAND
WASHINGTON, DC 20315

REPLY TO
ATTENTION OF

December 27, 1983

MT-C

Honorable Glenn Anderson
House of Representatives
Washington, D. C. 20515

Dear Mr. Anderson:

During our testimony at the Household Goods Transportation Act Oversight Hearing on November 16, 1983, you specifically asked for the total manpower statistics for military service personal property offices. These statistics are provided for the record at the enclosure.

Sincerely,

Harold I. Small
Major General, U. S. Army
Commanding

Enclosure

Authorized Personal Property Office Manpower Strengths

Fiscal Year 1984

Military Traffic Management Command (MTMC)

	Headquarters-PP	Eastern Area-PP	Western Area-PP	Field Office Europe	Field Office Pacific
Manpower (Military/Civilian)	11 Mil/49 Civ	5 Mil/42 Civ	3 Mil/14 Civ	7 Mil/5 Civ	1 Mil/3 Civ
Total Manpower	60	47	17	12	4

By Military Service

	US Army	US Air Force	US Navy	US Marine Corps
Manpower	332 Mil/1,665 Civ	915 Mil/605 Civ	86 Mil/794 Civ	145 Mil/111 Civ
Total Manpower	1,997	1,520	880	256

	Total Manpower
MTMC	140
Military Services	4,653
Grand Total	4,793

Mr. **Anderson**. Now, I am told the military spends about $400 million a year on domestic household goods moves. By comparison, IBM has a budget of some $25 million for moving their employees domestically, and they utilize less than 27 people to manage their household goods traffic as well as other functions.

Would it not make sense for the military to seek ways to operate with less personnel, like the large commercial shippers do and thereby be able to convert their excess personnel to building the military muscle in other areas?

In other words, why can the MTMC not operate in more of a commercial mode and thus save taxpayers' money?

General **Durham**. Well, Mr. Chairman, first of all, I think you would have to look at the size of our program versus, for example, IBM or some of the commercial accounts. We are a worldwide program. We move some 700,000 shipments a year, and to manage that program, and it is also a $1.2 billion program on a worldwide basis, to manage that properly, we feel that we need the amount of people that we have.

Mr. **Anderson**. How about domestically?

General **Durham**. The same people manage both programs.

Mr. **Anderson**. In devising the new interstate rate solicitation program for household goods carriers, I am wondering if you have taken into consideration the additional workload this will impose on the movers. Is it correct that the additional paperwork will multiply many times the present requirement involved in the filing of individual rate tenders?

General **Durham**. No, sir. To the contrary, we feel that there will be a reduction in workload. The tender is essentially—the one that we are proposing to send out ourselves under our own solicitation is essentially the same as the tender that the rate bureaus are developing now.

In fact, where carriers at this time, for example, have to file rates for their full authority, this means if they have 48-State authority, they have to file separate pieces of paper, for each rate channel. Under our proposal, they will just file one. That is just one example.

Mr. **Anderson**. So you think it is going to be less paperwork instead of more paperwork?

General **Durham**. It will be less, yes, sir, it will be less.

Mr. **Anderson**. In your statement you say:

> The issuance of a government solicitation such as the one proposed by MTMC in this instance conforms to Federal procurement policy. I know of no other Federal procurement program which purchases services through an intermediary which collectively sets rates with some form of immunity from the antitrust laws.

Now, is this new procurement mechanism being proposed as an attempt to dissuade the household goods carriers from utilizing rate bureaus?

General **Durham**. No, sir, not at all. One of the reasons why we are proposing our new solicitation is so we can gain better control of the program, a program of some $360 million that affects the lives and the welfare of a lot of military people, the inherent responsibility we have to protect the taxpayer's dollar, these types of things that we felt that we did not have the right control of that program before by having the rate bureaus manage and file that tender.

By us having control of the tender, we can do a better job that the DOD has chartered us to do. So it is not a means at all to eliminate the rate bureaus.

Mr. ANDERSON. Will this procurement device result in less paperwork for the Department of Defense?

General DURHAM. Yes, sir.

Mr. ANDERSON. What you just said may contradict what you may have said in your statement here. Your statement says:

> The issuance of a government solicitation such as the one proposed by MTMC in this instance conforms to Federal procurement policies. I know of no other Federal procurement programs which purchase services through an intermediary which collectively sets rates with some form of immunity from the antitrust laws. In the interest of increasing competition, DOD must acquire rates for these services under procedures which are more in line with those used by other agencies procuring competitive services directly from individual firms.

That gives me the impression that what you are trying to do is get them away from utilizing the rate bureaus.

Mr. GIBONEY. Mr. Chairman, the practical effect of this solicitation would be that the rates in the future, if this proposal is adopted, would come from the individual carriers directly to MTMC rather than the rates coming through the rate bureau, which enjoys antitrust immunity.

So to the extent that we are soliciting rates directly from individual carriers, we are eliminating the role of the rate bureaus insofar as their setting collective rates.

Mr. ANDERSON. Maybe my question was wrong then. Instead of asking whether this new procurement device is an attempt to dissuade the household goods carriers from utilizing rate bureaus, although this is probably what will happen, it is not the reason for its implementation, is that what you are saying?

General DURHAM. That is correct.

Mr. ANDERSON. In other words, they are not going to use rate bureaus but that is not the reason that you did it.

Mr. GIBONEY. That is a consequence of our proposal.

Mr. ANDERSON. Of what you are doing, not the reason for your doing it.

Mr. GIBONEY. That is a consequence of our proposed solicitation. There are many factors and reasons that were considered and are being considered. No decision has been made on that proposed modification. But as I said before, that is a consequence of the proposed modification. There is no intent on our part to eliminate the rate bureaus.

Mr. ANDERSON. Mr. Sunia?

Mr. SUNIA. No questions, Mr. Chairman.

Mr. ANDERSON. Mr. Shuster?

Mr. SHUSTER. General and gentlemen, I am sorry I am a little late. I do have one question. The Household Goods Act permitted the industry to compete and intended to release the shackles of regulation and burdensome paperwork.

In Chairman Taylor's testimony, he pointed to a dramatic decrease in the number of complaints filed against household goods carriers since the enactment of the act. I understand that Assistant Secretary Scocozza stated in his testimony that:

> More competition, more operating flexibility and the right to guarantee good service have had the effect intended by Congress. Household goods customers are getting better service.

However, I understand in your testimony, that you have stated, "It is an important program which requires continuous and intensive management." Your testimony seems to contradict Mr. Taylor and Mr. Scocozza's. Do you feel that more regulation is necessary, and if not, how do you address industry concerns that redtape for military moves have increased, not decreased?

General DURHAM. Well, first of all, vis-a-vis our relationship with the ICC, they regulate, we purchase, of course, so we do not get too much into that. But along that same line, as the regulation does decrease, we have an inherent responsibility to protect the taxpayer and to protect our interest when we are managing that $1.2 billion program, and that is to insure that we receive the services that we are paying for.

I think this is basically done through the rules and regulations that we establish.

Mr. SHUSTER. So you are saying as the ICC regulates less you have to regulate more?

General DURHAM. We are not saying that we have to regulate more, no, sir. We are saying that responsibility shifts to the shippers to protect themselves.

Mr. SHUSTER. But do you agree with the industry concerns which have been expressed to us that redtape for military moves has increased over the past several months?

General DURHAM. No, we do not agree with that. In fact, to the contrary, we can cite several examples, since the act was passed, that it has decreased.

Mr. SHUSTER. OK. I will ask the staff to look into this whole question. We may have further questions then to come back to get you to amplify further on.

Mr. ANDERSON. We will keep the record open for those answers to the questions.

Thank you very much, General, for your presentation.

Our final witness today is from the American Insurance Association, James Kimble, the senior counsel.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF JAMES L. KIMBLE, SENIOR COUNSEL OF THE AMERICAN INSURANCE ASSOCIATION

The American Insurance Association (AIA) is a trade association representing 170 property and casualty insurers doing business in all 50 states. Ten of the fourteen insurers which write two percent or more of the commercial auto liability market are AIA member companies. These companies write a combined total of forty-five percent of the direct written liability premiums for commercial auto insurance in the United States. Our member companies are vitally interested in the insurance provisions of the Motor Carrier Act of 1980.

The AIA believes that the Motor Carrier Act should be amended so that the Department of Transportation (DOT) is granted the authority to adjust the levels of financial responsibility required by the Act. Currently, the limits are established by Congressional mandate. A DOT rulemaking process would allow flexibility in establishing minimum limits of insurance coverage in the forum best suited to review the information on which appropriate levels should be established.

Section 30 of the Motor Carrier Act establishes mandatory liability insurance limits at levels far in excess of previous ICC requirements. Effective July, 1981, Section 30 of this Act requires the following minimum levels of financial responsibility: The $750,000 for the interstate or foreign for-hire transportation of general freight; $5,000,000 for the intrastate or interstate transportation of certain extremely hazardous materials; and, $1,000,000 for the intrastate or interstate transportation of other hazardous materials.

The provisions of the Act recognized the potential effect which the abrupt movement to higher minimum limits would have had on the insurance industry, the motor carrier industry and public safety. Specific authority is conferred on DOT to allow reduction of: The $750,000 and $1,000,000 requirements to $500,000; and, the $5,000,000 requirement to $1,000,000 for up to two years.

The DOT final rule, published in the June 11, 1981, Federal Register, established the financial responsibility limits for motor carriers at the lowest levels permitted by the Act. The final rule stated that, effective July 1, 1981, for a two year period, for-hire motor carriers of non-hazardous property in interstate and foreign commerce must maintain liability insurance limits of at least $500,000, while intrastate and interstate carriers of certain hazardous substances and material transported in bulk must have liability insurance limits of at least $1,000,000. Interstate carriers transporting any quantity of hazardous material must maintain $500,000 liability insurance limits, while intrastate non-bulk carriers of hazardous materials were exempt from the Act. The decision to implement the lowest limits for the full two year period was based on comments received during the DOT rulemaking process, and on the belief that the reduced levels would not adversely affect public safety and would prevent a serious disruption in transportation service.

Since the June, 1981, final rulemaking, the Secretary of Transportation has delivered a Report to Congress on the MCA, as required by the Act. It recommended that the minimum levels of financial responsibility remain in effect after June 30, 1983, subject only to DOT rulemaking relative to requiring different levels of financial responsibility as the needs of public safety may dictate.

On January 6, 1983, the President signed into law the Surface Transportation Assistance Act which allows the Secretary of Transportation to extend the "phase-in period" for the reduced levels of financial responsibility from two years to three and one-half years (i.e., until January 1, 1985). This Act did not confer the recommended discretionary powers suggested in the Secretary's Report to Congress, but did potentially allow an additional 18 months for concerned industries to prepare for the higher financial responsibility limits. A recently issued DOT final rule has granted an additional one year extension for the lower limits and allows for the possibility of a further 6 months extension.

The American Insurance Association believes that the inclusion of minimum financial responsibility requirements in the Motor Carrier Act which do not allow for reducing the minimum level based on accident experience will have an adverse effect upon the public, the insurance industry, and its policyholders. Consequently, the Association supports amending statutory language to the Motor Carrier Act which would grant DOT discretionary authority to reduce the limits established in Section 30 of the Act. The following paragraphs identify the major concerns of our members.

SPECIFIC MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY SHOULD BE ELIMINATED

The Motor Carrier Act constrains DOT by including specific dollar amounts of insurance coverage. Specific dollar limits should not be legislated. The establishment of dollar minimums should be delegated to the rulemakers. The regulatory agency which has the responsibility to implement the legislation needs the statutory freedom to equitably adjust the parameters of insurance requirements based on their investigations and expertise. Proper levels of financial responsibility should be established through a rulemaking process based on relevant information.

AVAILABLE DATA INDICATE THAT LOSSES IN EXCESS OF $1 MILLION ARE MINUSCULE

Available data indicates that there is no logical association between the higher limits which will go into effect in July 1984 and actual loss experience. Information collected by the Insurance Services Office and the Department of Transportation show that a vast majority of claims result in damage of less than $500,000. Any mandate for insurance coverage which does not reflect the loss data based on hundreds of thousands of claims over a period of years is illogical. The AIA would prefer that the authority to establish limits of financial responsibility be transferred to the Department of Transportation so that a rulemaking process can be commenced which takes into consideration the appropriate data on which levels of financial responsibility should be based.

The following claim data shows the sufficiency of the current limits, while the cost data indicates that higher limits may lower the level of public safety.

We believe that a $500,000 minimum limit of financial responsibility is sufficient to protect the safety of the general public. The sufficiency is demonstrated in the statistical data summarized on page 6 which shows the extremely low frequency of large losses.

The current statistical procedures for recording commercial automobile losses are not structured in a manner that permits truckers' losses to be isolated by amount of loss. However, in reviewing the losses for all commercial automobile risks (i.e., public autos, garage vehicles, private passenger fleets and trucks) a realistic estimate of trucking losses can be presented. The data summarized on page 6 was provided by the Insurance Services Office which is the statistical agent representing 75 percent of the total commercial automobile market. A review of the ISO data, which reflects commercial automobile losses incurred from January 1, 1977 through September 30, 1981, reveals 1,908,861 paid losses—with 839 losses between $250,000 and $500,000, and only 157 losses of $500,000 or more. To put these losses in perspective, only 0.04 percent of the reported losses were $250,000 or more and less than 0.01 percent exceeded $500,000.

Several points must be kept in mind when reviewing the frequency of large losses. First, these data are combined payments for bodily injury liability and property damage liability. Secondly, the losses in the exhibit are stated in terms of the limits of the primary insurer and do not reflect the presence of any excess or umbrella liability policy. Lastly, these data reflect the losses of all commercial automobile risks which includes the trucking risks.

CLAIM SIZE DISTRIBUTION

	Total losses incurred	Losses $250,000 or more, less than $500,000	Percent to total	Losses $500,000 or more	Percent to total
Accident year 1977	385,471	80	0.021	27	0.007
Accident year 1978	458,325	134	.029	25	.005
Accident year 1979	420,596	181	.043	31	.007
Accident year 1980	283,821	221	.078	36	.013
Accident year 1981 (through September 30, 1981)	360,648	223	.062	38	.011
Combined total	1,908,861	839	.044	157	.008

Source: Insurance Services Office, 1983.

Based on current rates found in the ISO Commercial Rating Manual, we have taken a representative high, average and low rate territory and computed the cost of increased minimum limits. A for-hire motor vehicle with liability protection of $25,000 CSL (combined single limit) that in 1981 became subject to the $500,000 CSL was subjected to a 29 percent premium increase. A 38 percent premium increase was necessary in order to offer a $1,000,000 CSL. The trucker with liability protection at the previous ICC minimum who purchased the $500,000 or $1,000,000 was subjected to a 23 percent and a 59 percent increase, respectively. A for-hire motor vehicle currently carrying a $1,000,000 CSL who becomes subject to a $5,000,000 CSL will be subjected to an additional 29 percent premium increase. These figures represent the range of base premiums used by insurers in the voluntary market. They do not take into account additional premiums required due to any applicable surcharge or experience rating plan.

Obviously, the insurance costs associated with the high minimum limit requirements will form an increased portion of the trucker's operating costs. While many of the large, established carriers may be able to offset these increased costs through additional revenues, the new carrier may not have this luxury. Some mandatory costs, such as fuel, licenses and taxes, cannot be decreased. In fact, the Surface Transportation Assistance Act signed into law January 6, 1983 has increased operating costs relating to fuel (through its 5 cents per gallon surcharge), license fees and taxes.

Option cost items—safety programs, preventive maintenance and upgrading of equipment—are controllable and may be reduced by the motor carrier to offset increased costs in other areas. Reducing these safety-oriented expenses may well be the only alternative to the trucker who has newly-obtained operating authority and must compete for business through lower rates.

The AIA believes that any reductions in the area of maintenance, upgrading of equipment and vehicle inspections will be detrimental to the public's safety.

ESTIMATED AVERAGE COST OF MINIMUM LIABILITY INSURANCE

Limit	High rate (Arlington, Va.)	Average rate (Omaha, Nebr.)	Low rate (Dayton, Ohio)
$25,000 CSL	$2,063	$1,688	$1,343
100/300/50	3,402	2,784	2,215
Additional charges for:			
$500,000 CSL	394	322	256
$750,000 CSL	600	491	390
$1,000,000 CSL	786	643	511
$5,000,000 CSL	2,003	1,638	1,304

Note.—These costs represent the annual base rate for zone-rated trucker with a single tractor/semitrailer unit.

Source: Insurance Services Office, 1983.

HIGHER INSURANCE LIMITS DO NOT ENHANCE SAFETY

The Congressional belief that higher insurance limits will result in increased safety through the inability of the unsafe carrier to either obtain insurance coverage or obtain coverage at an affordable cost is a major misconception. The report associated with the Motor Carrier Act of 1980, authored by the House Committee on Public Works and Transportation, states that "an unsafe carrier will have an increased premium, and a totally unsafe carrier may not be able to obtain the insurance to operate. . . ." However, while insurers may refuse to provide coverage in the voluntary market due to poor accident history, financial instability, or failure to meet minimum safety standards, all motor carriers have access to insurance through a residual market mechanism. It must provide the limits and coverages required by law as long as a valid operator's license remains in effect and the policy premium is paid. Since the residual market risk is not subject to ordinary insurance cancellation provisions, the primary incentive to comply with a safety program—loss of coverage—is nonexistent.

The perception that high insurance requirements associated with the Motor Carrier Act will enhance motor carrier safety is misplaced. Insurance responds after the accident in order to assure that injured parties receive restitution for their loss. The effect of safety requirements can be seen during and before the accident.

During the accident certain safety requirements may result in the reduction or elimination of the bodily injury and property damage loss associated with the accident through improvement or implementation of protective devices. Seat belts, padded dashes, shatter proof glass, five mile per hour bumper standards, improved brake systems and child restraint seats are examples of safety requirements which eliminate or minimize loss.

The key area of safety which is in critical need of attention is before the accident. In an effort to prevent accidents, safety requirements such as driver's license exams, vehicle inspections, traffic signals, sealed beam headlights and directional signals, median guardrails, rest areas, police patrols, radar and civil and criminal penalties for violations and convictions have been adopted. As a result the death rate per 100 million miles has been reduced from 5.06 in 1960 to 3.17 in 1981.

The key to any review of motor carrier safety must focus on the driver. The American Trucking Association (ATA), in its testimony before the Senate Committee on Commerce, Science and Transportation on June 14, 1983, stated: "However, we believe it is imperative that legislation be enacted for better control of the human factors that cause accidents because most accidents caused by trucks result from human error, not from defective vehicles." A vast majority, perhaps 95 percent, of motor carrier accidents result from driver error. As stated by ATA before the Senate Commerce Committee, "In order to improve truck safety, the government needs to refocus its efforts on elimination of human error and other human factors which cause truck accidents."

The American Insurance Association believes that for those commercial drivers who operate vehicles subject to the Motor Carrier Act and the Bus Regulatory Reform Act, an average acceptable accident/conviction per calendar year rate should be established by federal regulation. All operators should be required to register with the National Driver Register. Should a driver exceed the national accident/conviction rate, he and his employer should be subject to a fine. The monies should be used to subsidize road side vehicle and driver inspections. If a driver is an habitual offender, suspension of license should be imposed. Similarly, if an employee's record is noted for repeated violations, his right of federal operation should be suspended based on the severity of the convictions and the causes of the accidents.

HIGHER INSURANCE LIMITS NEGATIVELY IMPACT SMALL BUSINESS

Section 3 of the Act makes the specific finding that ". . . the existing regulatory structure has tended in certain circumstances to inhibit market entry . . . and opportunity for minorities and others to enter the trucking industry." The statute represents an attempt to remedy these deficiencies. Yet the cost of the high minimum insurance limits may undermine this objective by creating an entry barrier for the small and minority trucker. The rulemaker must be in the position to assess and control factors that disrupt the intent of the Act. The Department of Transportation's Motor Carrier Financial Responsibility Report states:

SELECTED LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS OF PROPERTY AND THEIR PROJECTED INDUSTRY PREMIUM

[Single injury/multi-injury/property damage; dollar amounts in millions]

Levels of coverage	Industry premium	Incremental difference	Increase from base (percent)
Base: $100,000/$300,000/$50,000	$1,220.9		
Scenario I: $500,000/$1,000,000/$500,000	2,887.3	$1,666.4	236.5
Scenario II: $500,000/$5,000,000/$750,000	2,986.8	99.5	244.6
Scenario III: $750,000/$5,000,000/$1,000,000	3,131.6	144.8	256.5
Scenario IV: $1,000,000/$1,000,000/$5,000,000	3,347.1	215.5	274.2

The scenarios indicate that the overall impact would prove substantial and, therefore have the potential to produce a serious burden on marginal companies. Furthermore, it is believed that, because the large and much stronger companies might well be capable of sustaining the higher cost associated with increased financial responsibility, there would be a disproportionate burden levied on the small motor carriers. In this situation, the smaller companies would be trapped in a cost/price squeeze resulting from the difficulty of raising rates in a marketplace where carriers with excess capacity are competing for available freight.

In addition to the substantial increase in size of the industry premium and the industry's financial sensitivity to reduced cargo (tons) available to the common carriers (due to the state of the economy and shifts or innovations in transport service used in the market) the ability to generate profit was also considered. In this analysis based on 1978 and 1979 financial data, approximately 3,000 companies were studied. The analysis showed that in 1978 over 430 companies had losses in operating income while by 1979 nearly 730 companies (an increase of 69.8 percent) fell to negative levels of operating income. Indications from published quarterly statements are that the number of firms suffering operating losses will remain high. Complicating the situation, many ICC regulated motor carriers wrote off the value of their operating rights in 1980. These write-offs will tend to add complexity in determining the actual financial state of the industry.[1]

EFFECT ON THE RESIDUAL MARKET (ASSIGNED RISK PLAN)

We noted in previous testimony that adoption of $5,000,000 limits would be an incentive to growth in the residual market (see pages 8-9 for description of "residual market"). With limits of this magnitude, more insurers will be tempted to avoid providing coverage in the voluntary market. Some smaller insurers may be unwilling or unable to provide such protection. Risks which are not written voluntarily must be insured through the residual market.

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[1] Motor Carrier Financial Responsibility Report. Department of Transportation, May 4, 1982, pp. 14-15.

The regulators have mitigated much of this concern by permitting the aggregation of limits and through adoption of the minimum financial responsibility requirements allowed under the Act. This regulatory action in combination with a very competitive commercial marketplace has thus far avoided serious residual market concerns. However, we submit that failure to maintain the current limits may destabilize the market and result in adverse growth in the residual market.

The American Insurance Association favors an amendment to the Motor Carrier Act of 1980 which would grant discretionary authority to DOT to lower the Motor Carrier Act's minimum requirements based on a rulemaking procedure. The available data associated with commercial auto accidents indicates that the current levels of mandated financial responsiblity are more than sufficient. If there is a perceived need for increased insurance limits for motor carriers, the current limit should be reviewed by the appropriate regulatory agency.

Our experience with DOT relative to the rulemaking process associated with the Motor Carrier Act indicates that the Agency will establish financial responsibility requirements based on a logical review of available loss information. The AIA believes that accident data should be the principal factor in establishing proper levels of financial responsiblity. Accordingly, we support the transfer of authority to establish financial responsibility requirements to the Department of Transportation.

The role of insurance is not safety. Safety is prevention. No amount of insurance will curtail driver error. If an accident occurs due to driver error or mechanical failure, the key insurance activity of compensating victims will then come into play. Insurance is a method for spreading risk among policyholders and insuring compensation to accident victims. Safety is enhanced through driver education and mechanical maintenance. The two concepts should not be confused.

Mr. ANDERSON. Please proceed.

TESTIMONY OF JAMES KIMBLE, SENIOR COUNSEL, AMERICAN INSURANCE ASSOCIATION

Mr. KIMBLE. Mr. Chairman, my name is Jim Kimble. I am senior counsel to the American Insurance Association. The members companies of the association provide approximately 45 percent of the commercial auto insurance throughout the United States.

Our interest in the Motor Carrier Act is very focused and limited. Nevertheless, it is extremely important to the insurance industry. Our interest has to do with the financial responsibility requirements in the act.

Currently there is an extension until July 1984 which maintains the lower limits, the lower financial responsibility requirements which have been in effect since enactment of the law. Those limits currently are $500,000 for a carrier of nonhazardous commodities, $500,000 for hazardous commodities, and a million for a carrier of extrahazardous commodities. As of July 1984, those limits will go up. In the case of the extrahazardous area, that limit will go up to $5 million.

I am here today to request that the Congress transfer authority to set those limits of financial responsibility to the Department of Transportation. We have had several experiences with the Department of Transportation the last couple of years with the Bus Regulatory Reform Act, the Motor Carrier Act and the Surface Transportation Act which indicate that the Department sets is limits based on loss data. We feel that that is a logical methodology to establish proper insurance limits.

There is a set of data on page 6 of my testimony which indicates that accidents which result in damages in excess of a million dollars are minuscule, much less than 1 percent of the total commercial auto accidents. We, therefore, conclude that the $5 million limit is inappropriate. Our experience with DOT suggests to us that it is the regulator which has the flexibility and the expertise to set those limits properly.

We also, as I mentioned earlier, through experience, come to the conclusion that their limits or levels of insurance requirements are established based on the loss data. That, we feel, is the logical way to set the limits.

Finally, I would like to discuss briefly the concept that higher insurance limits enhance safety. This committee's report, when the Motor Carrier Act was enacted, suggested that higher insurance limits would enhance safety because the insurer, through its underwriting process, would act as a surrogate regulator. That is, you make the acquisition of insurance a prerequisite for doing business. The insurer, through its underwriting process, will put the bad trucker out of business by not providing insurance. That is a gross misconception.

The insurer cannot remove the driver from the road because each State has a residual market mechanism. If the trucker can show that he has been denied coverage by three insurance companies and he has a valid driver's license, he can obtain insurance through the residual market mechanism. Therefore, it is impossible for us to act as that surrogate regulator and remove the bad driver from the road.

In fact, I think a good argument could be made that higher insurance limits will reduce safety. If the higher limits go into effect, premiums will increase drastically. There is a chart on page 8 of my testimony which outlines what those premium increases will be.

If the trucker has a fixed amount of excess income and he needs insurance in order to stay on the road to meet the Motor Carrier Act's financial responsibility requirements, that fixed income will go to higher insurance premiums, not for maintenance of that truck or new equipment.

Therefore, there is a distinct possibility that safety will be reduced through higher insurance limits, not enhanced.

Again, the concept of safety. Safety, in my mind, is something which occurs before and during the accident. Seat belts, padded dashes, bumper standards, and driver education. Those events occur before and during the accident to enhance safety.

Insurance is a matter of restitution, compensation. It occurs after the accident. No amount of insurance will eliminate or decrease the number of accidents from commercial auto drivers.

Driver error is responsible for between 90 and 95 percent of the accidents. Insurance can, in no way, affect that situation. Given the fact that increased insurance limits do not enhance safety, I would ask you to transfer authority to DOT to set proper insurance limits in the Motor Carrier Act.

As an alternative, perhaps, we would find it acceptable if you could freeze the current insurance limits after a review of the proper loss data which should clearly show that the current limits are appropriate.

Thank you.

Mr. Anderson. Thank you, Mr. Kimble, for your presentation. Mr. Kimble, it was the position of Commissioner Andre this morning that, contrary to your assertions, in a competitive industry, a carrier would not curtail maintenance and safety programs because this would drive up his insurance rates, something he could not afford to have happen.

Is Commissioner Andre not correct in his assessment?

Mr. Kimble. That statement is accurate if the carrier has a sufficient amount of money to respond both to increased insurance premiums and maintenance. Increases in insurance premiums which will go up based on the jump in the levels of insurance required in the Motor Carrier Act as of July 1984.

Mr. Anderson. Then you are saying it is both ways?

Mr. Kimble. Well, it is clear that a part of the underwriting process for the insurer is to take into consideration maintenance of the truck and the driver's loss record. So to that extent, it is a correct statement.

But insurance premiums will go up, in any case, if those current limits are allowed to jump in July 1984. Also, if you are dealing with a carrier who has a limited amount of capital, he may have to make a choice between paying an insurance premium which will go up naturally in July 1984 or maintaining his truck.

If he must obtain a certain level of insurance in order to meet the requirement in the Motor Carrier Act, then he naturally will choose to pay that higher insurance premium, and in the situation with the trucker with the limited amount of capital, perhaps maintenance will suffer, because the money just will not be there for both items.

Mr. Anderson. You highlight in your statement here, in an outstanding paragraph, "Higher insurance limits do not enhance safety." And you say, "The congressional belief that higher insurance limits will result in increased safety through the inability of the unsafe carrier to either obtain insurance coverage or obtain coverage at an affordable cost is a major misconception."

So it seems to me that you are playing both sides of the street on this, and maybe you have to.

Mr. Kimble. Well, the theory which is articulated in that committee report was that the insurer, through the underwriting process, would remove the bad driver from the road, because that trucker could not obtain insurance. If he did not meet the requirements of the Motor Carrier Act, he could not drive that truck.

The misconception has to do with the existence in each State in the United States of a residual market mechanism. If the trucker can show that he is not an acceptable risk in the voluntary market and he has a driver's license, he then goes to the residual or involuntary insurance market mechanism and he will get insurance through that mechanism.

So we cannot remove the driver from the road.

Mr. Anderson. The impression I got this morning, though, from Mr. Andre was that if someone is in business and if they allowed themselves, through neglect or something, to not keep their safety devices up to date, they would be cited. They would get tickets or whatever action would happen to them, and that their insurance rates would go up, and that insurance rate increase would be so much that it would be prohibitive for them and so they would not let that happen. That is almost the way he said it. It is just the opposite of what you are saying.

Mr. **Kimble**. To that extent the statement is correct. We can punish the bad driver by making insurance less affordable. But we cannot make it unavailable. The driver will get his insurance.

If the driver has a limited amount of money to spend on maintenance or the insurance, the money will go to the insurance not to the maintenance of the truck. The insurance premiums will go up in any case as of July 1984——

Mr. **Anderson**. But will they go up more if you do not maintain your record and keep things good.

Mr. **Kimble**. Yes.

Mr. **Anderson**. So, in a sense, what you are saying is that if you do police your own business, you can keep your rates down to some extent.

Mr. **Kimble**. Yes.

Mr. **Anderson**. So what Mr. Andre was saying this morning, and what you are saying here, though, is quite different.

Mr. **Kimble**. I will repeat it again. We can punish the driver by increasing his insurance premium but we cannot take him off the road because of the residual market mechanisms. We must provide him with insurance. It may be more expensive.

Mr. **Anderson**. But you can keep adding to his rate if he does not do certain things, if he gets so many tickets or has so many accidents you can make it so that it is not in his business interest to allow his safety record to deteriorate, so he goes out of his way then to make sure his truck is in good shape, his drivers trained, and all these various things he should be doing.

Mr. **Kimble**. Yes.

Mr. **Anderson**. Mr. Shuster.

Mr. **Shuster**. Thank you, Mr. Chairman.

What about the issue of protecting the traveling public, seeing to it that the driver of the truck and the truck has adequate insurance so that if there is an accident a person is not left high and dry?

Mr. **Kimble**. The issue is what is adequate insurance. The loss data on page 6 of my statement indicates that less than one-half of 1 percent of the commercial auto accidents result in damages in excess of $500,000. That is why we are concerned about insurance limits in the Motor Carrier Act going up to $1 million in July 1984 if you carry some types of hazardous substances; $5 million if you carry extrahazardous. We feel it is unnecessary based on that loss data.

We would agree with you that we do play a role in terms of compensation, restitution, but we want those levels of insurance set based on what we feel is the most logical criteria, the loss information.

Mr. **Shuster**. Thank you very much.

Mr. **Anderson**. Mr. Sunia.

Mr. **Sunia**. I want to be clear, Mr. Chairman.

Are we talking about insurance of the truck or of the driver?

Mr. **Kimble**. I am sorry. I did not hear you, sir.

Mr. **Sunia**. Are you talking about insurance of the driver?

Mr. KIMBLE. Yes.

Mr. SUNIA. Now, presumably you would not learn the information about his not possessing insurance until the second time around when his record reflects that he has had a ticket, therefore the adjustment will not be made until sometime later, in the rates?

Mr. KIMBLE. That is correct. Yes, it is, by necessity, a retroactive review.

Mr. SUNIA. That is all, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Kimble for your presentation.

That completes our hearing.

The subcommittee stands adjourned.

[Wherepon, at 3:10 p.m, the subcommittee adjourned subject to the call of the Chair.]

ADDITIONS TO THE RECORD

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October 21, 1983

The Honorable Glen M. Anderson
Chairman
House Subcommittee on Surface
Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Re: Oversight Hearings on Motor Carrier Act of 1980

Dear Congressman Anderson:

The undersigned respectfully requests that the attached statement of Denis R. Zegar, submitted on behalf of the National-American Wholesale Grocers' Association (NAWGA), be included in the official record of the annual oversight hearings on the Motor Carrier Act of 1980 which are being conducted by the Subcommittee on Surface Transportation.

NAWGA is a national trade association representing nearly 400 independent wholesale grocers and food service distributors. NAWGA members are almost universally private carriers and use their proprietary fleets primarily to move products from warehouses to customer premises. NAWGA members also rely heavily on motor common and motor contract carriage. To date, NAWGA's experience under deregulation has been very positive. The attached statement identifies clearly the benefits which have accrued to NAWGA members as new competition has been introduced into the regulated trucking industry and new options have been made available to private carriers to make their proprietary fleet operations more efficient.

Sincerely yours,

WH Borghesani Jr

William H. Borghesani, Jr.

Enclosure

cc: Committee Members

STATEMENT
OF
DENIS R. ZEGAR
before the Surface Transportation Subcommittee, House Committee on Public Works and Transportation
on behalf of the
NATIONAL-AMERICAN WHOLESALE GROCERS' ASSOCIATION

My name is Denis R. Zegar and I am Vice President for Government Services of the National-American Wholesale Grocers' Association.* I very much welcome the opportunity to submit this statement for the official record to this Subcommittee which is conducting annual oversight hearings on the Motor Carrier Act of 1980.

By way of further introduction, NAWGA is a national trade association representing nearly 400 independent wholesale grocers and food service distributors. These companies, both large and small, supply grocery products and provide a wide array of services to retail grocery stores, hospitals, schools, restaurants and other food service establishments throughout the United States. Marketing products from over 800 separate distribution centers, NAWGA member companies account for nearly $50 billion of the nation's grocery product volume and 1/3 of the grocery supply distributed nationally. NAWGA's food service division, the

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Mr. Denis R. Zegar
Vice President, Government Services
National-American Wholesale
  Grocers' Association
201 Park Washington Court
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(703) 532-9400

International Food Service Distributors Association (IFSDA), represents member firms that sell annually over $10 billion in food and related products to the institutional, away-from-home food service market.

As the record will show, NAWGA was a very active participant before the Congress and this Subcommittee in the development of the Motor Carrier Act of 1980. NAWGA members are almost universally private carriers and use these proprietary fleets primarily to move products from warehouses to customer premises. Our members also rely very heavily on motor common and motor contract carriage, primarily for movements from suppliers to NAWGA member warehouses. So our members have a dual interest in assessing and taking advantage of the effects of the Motor Carrier Act of 1980. Let me say at the outset that these effects, by and large, have been extremely beneficial to our members.

As far as NAWGA is concerned, the Motor Carrier Act of 1980 is working in the marketplace for the benefit of our members and inevitably for the benefit of the ultimate consumer of food and grocery products. So, as NAWGA views it, the ICC has been doing its job both as to the letter and spirit of the Act in carrying forward the intent of Congress to introduce meaningful, new competition into the regulated trucking industry and to maximize the options that are available to private carriers in making their own proprietary fleet operations more efficient.

BACKHAUL ALLOWANCES

NAWGA members and the ultimate consumer of food and grocery products have benefitted greatly from Section 8 of the Motor Carrier Act of 1980 which permits sellers of food and grocery products who sell on a zone delivered pricing basis to offer backhaul allowances up to or a percentage of what would have been the actual transportation costs had the sellers been responsible for delivering the products to the buyers. I am very happy to say that a significant number of food and grocery suppliers have already put into place backhaul allowance programs. These programs have allowed NAWGA members, as food wholesalers, to utilize their private fleets much more effectively and, thereby, to minimize the number of empty backhaul miles that had been previously experienced before Section 8 became effective on July 1, 1980. Prior to that date, many food wholesalers had no incentive to divert their trucks and drivers, which may otherwise have been coming back empty from an outbound delivery to NAWGA member customers, to the distribution points or plants of food and grocery suppliers. The reason was that there were few backhaul allowances of any degree of attractiveness offered by these suppliers as an offset to the zone delivered price of the food and grocery products. Now, however, the situation has changed dramatically for the better.

It is common practice among NAWGA members, virtually every one of whom has a substantial private fleet operation, to utilize their fleets to pick up food and grocery products where practicable from suppliers selling on a zone delivered pricing basis because of the granting of backhaul allowances. So instead of coming back empty from the vicinity of a food and grocery supplier, NAWGA members now can use their private fleets to load their vehicles with inbound product and receive compensation in the form of a backhaul allowance for such an inbound movement. Moreover, NAWGA members, where it is not practicable in a given instance to use their private fleet, may also make arrangements with a regulated for-hire carrier with whom they deal to be their designated carrier for purposes of picking up goods at a supplier's place of business. The NAWGA member then pays the designated for-hire carrier and in turn receives from the seller the same backhaul allowance. In this situation, the supplier recognizes either a NAWGA member's own private fleet or the NAWGA member's designated for-hire carrier for purposes of granting the appropriate backhaul allowance.

I am happy to say that NAWGA has been highly instrumental in fostering a fuller implementation of Section 8 of the Motor Carrier Act by publicizing terms and conditions of backhaul allowances granted by food and grocery suppliers. This is an ongoing service which is still being refined by NAWGA to its members and derives directly from Section 8 of the Motor Carrier Act.

SUPPLEMENTAL OPERATING AUTHORITY

NAWGA members as private carriers have also been able to improve their proprietary fleet utilization and thereby to reduce and in some cases eliminate empty mileage both on outgoing and incoming movements. This has been done by obtaining from the Interstate Commerce Commission supplemental operating authority as common or contract carriers. Our members then serve non-affiliated, outside shippers on a basis which complements the in-house proprietary transportation requirements of such wholesale grocers. The Motor Carrier Act, through its liberalized entry provisions, has greatly facilitated the granting by the Interstate Commerce Commission of such operating authority to NAWGA members.

This authority is held in two ways. NAWGA members, as corporate entities, sometimes apply in their right for supplemental operating authority. This is the so-called Toto approach deriving from the landmark 1978 decision of the Interstate Commerce Commission in Toto Purchasing & Supply Co. Private carriage continues with supplemental for-hire carriage being conducted. The other approach is for the wholesale grocer as a corporate entity to perform a wholly-owned trucking subsidiary. Then the subsidiary takes over the in-house trucking operations and performs identical service for its parent as the parent had once performed for itself as a private carrier. This can be done on an exempt for-hire basis pursuant to Section 9 of the Motor Carrier Act of 1980 permitting compensated intercorporate hauling. Moreover, the trucking subsidiary then performs regulated for-hire carriage as a common or contract carrier for unaffiliated outside shippers.

Many NAWGA members have obtained Toto authority and have created trucking subsidiaries. Indeed, the interest of NAWGA members in obtaining supplemental operating authority has been so great that NAWGA has published and makes available to its members a special truck transportation manual advising our members how to go about filing for ICC operating authority.

Incidentally, I would like to take this opportunity to complement the Interstate Commerce Commission with respect to its assessment and expeditious granting of common and contract operating authority. We have received no complaints from NAWGA members about any unusual difficulty in obtaining ICC operating authority, provided that they take the pains to prepare an adequate application for review by the Interstate Commerce Commission. So the Commission deserves appropriate recognition for the positive and constructive manner in which it has implemented the liberalized entry provisions of the Motor Carrier Act of 1980.

When our NAWGA members, operating proprietary fleets, obtain supplemental operating authority, they are able to enhance their non-transportation primary business activitiy by making their trucking operations more efficient. For example, if a food wholesaler has an outbound movement of goods from its warehouse to its retail or institutional customers at a remote location but no return haul, it makes the trucking operation costly and of course wastes fuel deadheading on return. Now NAWGA members, in addition to being able to obtain backhaul allowances for picking up their own goods from sellers as previously recounted, may obtain ICC operating authority to serve a non-affiliated shipper who needs service from the general area of the wholesaler's customer back in the direction from which the movement originated, namely, near the wholesaler's warehouse. By serving such shippers through ICC operating authority, the wholesaler is able in many instances to fill his vehicle, offer a needed service to the shipper in question and earn revenue on the return haul. This helps offset proprietary trucking costs and goes a long way towards eliminating the expenditure of fuel for deadheading.

A variation of this example arises where wholesalers have not been able to develop their primary business in a given geographical area to serve retailers and institutional customers because private carriage was too expensive without an offsetting backhaul. With both Section 8 backhaul allowances and the ability to obtain supplemental operating authority to serve an outside shipper, many wholesale grocers can finally afford to develop new business territories. This is possible because they can achieve backhaul revenues either in the form of backhaul allowances or through operating authority by serving other shippers on the return haul. This tends to open up new business for the wholesale grocers that is directly attributable to these provisions of the Motor Carrier Act of 1980.

In still another instance, a wholesaler who has a backhaul but no outhaul is able to remedy the problem, in many cases, by getting supplemental operating authority to serve a shipper at the wholesaler's home location who needs service to the remote point. This gets the wholesaler's vehicles to the remote point where it can take advantage of backhaul allowances to pick up supplies it is purchasing from sellers of food and grocery products. So operating authority is helpful to wholesale grocers both on the inbound and outbound legs of a transportation movement involving the use of a proprietary fleet.

SINGLE SOURCE AND TRIP LEASING

In its enlightened administration of the Motor Carrier Act of 1980, the ICC has issued favorable decisions which would permit NAWGA members as private carriers to single source lease trucks and drivers. The best example of a single source is the owner operator. In Ex Parte MC-122 (Sub-No. 2), the Commission decided to permit private carriers, including NAWGA members, to single source lease owner operators on an independent contractor basis. This would give NAWGA members as private carriers the same privilege as regulated carriers have had for decades. It would open up for the benefit for owner operators, for whom both the Congress and the ICC have had considerable solicitude, a brand new market for their services, namely , the nation's private carriers among which are NAWGA members. This decision was appealed and temporarily stayed by the U.S. Court of Appeals for the Eleventh Circuit which is handling the proceeding. However, on October 11, 1983, the Eleventh Circuit issued a ruling affirming the ICC decision in Ex Parte MC-122 (Sub-No. 2) thereby extending to NAWGA members as private carriers still another option which derives from the public policies underlying the Motor Carrier Act of 1980.

In another proceeding, Ex Parte MC-43 (Sub-No. 12), the Interstate Commerce Commission decided to permit NAWGA members as private carriers to trip lease their vehicles and drivers to ICC regulated common and contract carriers. Here, too, the ICC decided to eliminate a discrimination between private and regulated carriers and permit private carriers to have a parallel trip lease privilege to that which has been enjoyed between and among ICC regulated carriers. This decision, too, has been appealed and stayed and is before the same federal court. No decision is expected until sometime in 1984. So these two new options, which will be attractive to NAWGA members, have not yet become available. But when they do, they will be extremely helpful in improving fleet utilization.

For example, NAWGA members who are able to lease owner operators will be able to augment their fleets at will and give business to the nation's owner operators who need this business very desperately. By way of another example, if a NAWGA member has an empty outhaul or backhaul, he will gain an additional option of offsetting that haul by trip leasing his truck and driver to an ICC regulated carrier that happens to need an extra truck and driver. This will eliminate the empty haul, give the wholesale grocer an opportunity to earn some revenue from the lease of the truck and driver, make available an additional truck and driver for a specific trip to an ICC regulated carrier that needs them and eliminate the use of motor vehicle equipment on a dead head basis, thereby saving the expenditure of fuel relative to an empty movement. NAWGA has taken an active role in both these ICC and court proceedings on behalf of its membership and hopes that these options will be available soon.

BACKHAUL CLEARING HOUSE

In a further effort to help its members, NAWGA has implemented a backhaul clearing house. This is a computer oriented program and it is now underway. I am attaching to this statement a summary description of this clearing house. In essence, it will permit NAWGA members to achieve better traffic flows by making known their needs to other members for transportation service. Correlatively, NAWGA members being able to transport for other members, assuming they have appropriate operating authority, are able to use our clearing house to identify transportation opportunities. NAWGA is very excited about this concept and believes it will further the implementation of the various options to reduce empty mileage, both outhaul and backhaul, experienced with proprietary fleet operations. Credit must be given to the Motor Carrier Act of 1980 as implemented by the Interstate Commerce Commission in facilitating and stimulating in the marketplace the development of such a clearing house concept.

CONCLUSION

It has now been a little over three years since the Motor Carrier Act of 1980 went into effect. In summary, NAWGA's experience with the introduction of competition introduced by this Act has been very positive. From what we have seen of deregulation, we want more of it. To this end, NAWGA is supporting efforts to get the White House to release the bill drafted by the Department of Transportation at the White House request that would further deregulate and introduce more competition into truck transportation. Although we do not have all the particulars of the DOT proposal, we do think it is a movement in the right direction and that the Congress should be put in a position of giving serious consideration to the DOT proposal. NAWGA certainly will assess it once it is released and submit approriate testimony to this and other committees which no doubt in the future will hold hearings on the desirability of further advancing the deregulation effort as far as motor carriage is concerned.

CITY OF WEIMAR

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FRANCIS E. PARKS
CITY MANAGER

November 1, 1983

Committee on Public Works
and Transportation
U.S. House of Representatives
Room 2165 Rayburn House Office Building
Washington, D.C. 20515

Re: Testimony on Oversight of the Bus Regulatory Reform Act of 1982

To The Honorable Members of the House Subcommittee on Surface Transportation:

My name is Tommy Brasher and I am Mayor of the City of Weimar. Weimar is located in the central, southeastern part of Texas, and has a population of approximately 2,096 people. On behalf of the City of Weimar, we sincerely appreciate the opportunity to present testimony to your subcommittee on the Bus Regulatory Reform Act of 1982.

Recently, Greyhound Lines, Inc. filed a petition with the Railroad Commission of Texas, as well as the Interstate Commerce Commission to discontinue service completely to 58 Texas cities and towns, including Weimar. Hearings on this application were held before the Railroad Commission of Texas. Numerous citizens from Weimar appeared at these hearings and presented testimony in opposition to the discontinuance of Greyhound's service. For many citizens of Weimar, Greyhound's service is their only method of transportation, public or otherwise. Losing such service would be a serious hardship to many of these passengers. In addition, a number of shippers and receivers of freight from Weimar have no other overnight freight service available except that provided by Greyhound. Loss of such service will seriously impair their viability and ability to compete with businesses located in the larger metropolitan areas of Texas, such as San Antonio and Houston. These shippers and receivers located in Weimar include auto dealerships, pharmacists, veterinarians, dentists, physicians, nursing homes, savings and loan institutions, hospitals, florists, and various other businesses.

Without bus service, veterinarians in Weimar would be unable to secure vaccines and other needed supplies in emergency situations. Loss of bus service would be detrimental to a number of patients who reside in Weimar and who rely on the bus to travel to large cities, such as Houston and San Antonio, for specialized medical treatment. For example, there are several dialysis patients who reside in Weimar and who depend on bus service as their only method of travel to receive treatment. These patients cannot afford another method of travel, nor are they able to drive their own automobiles after receiving treatments. Without such treatments, these patients will die. Loss of bus service would also cause a shortage of urgently needed medical supplies such as fresh blood that can be received only by bus.

According to ministers and representatives of various ministerial alliances located in Weimar any reduction of the existing level of bus service will have its most dramatic impact on those who have no other means of transportation available to them: the elderly and the poor. These ministers routinely rely on the service provided by bus companies in assisting families and individuals reach medical facilities or travel to job locations at other communities.

Quite simply, we believe there is definite and compelling public need for a continuation of bus service to our community and we hope your committee will do something to preserve our bus service. Thank you for the opportunity of allowing us to present our views regarding our need for bus service.

Yours truly,

Tommy Brasher, Mayor
City of Weimar, Texas

TB:das

STATEMENT OF THE HONORABLE HOWARD W. CANNON BEFORE THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES NOVEMBER 16, 1983

As the original author and Senate sponsor of the Motor Carrier Act of 1980, I appreciate the opportunity to express some of my views on how the Act is being implemented three years later.

While I have been generally pleased with the substantial increase in motor carrier competition that has resulted from the legislation, I am increasingly concerned that the Interstate Commerce Commission may be misreading the intent of Congress. My view may be somewhat unique because I consider myself a strong proponent of deregulation. But I also know what Congress had in mind when it passed the Act and it was not total deregulation.

As I am sure the members of this Committee remember well, the Senate proposed a stronger, more pro-deregulation bill than did the House. We engaged in very hard and productive negotiations to produce what is now the Motor Carrier Act of 1980. One of the things we attempted--with mixed success-- was to provide the clearest possible policy guidelines to the Interstate Commerce Commission.

In the entry area, we were not very successful in developing a clear policy. Indeed, it is fair to say that the compromise process left that area so fuzzy that the Commission has very substantial discretion. Given that substantial discretion, the Commission has adopted a very open entry policy. I happen to agree with that policy and believe the Commission was right to adopt it.

In contrast, however, we were far more precise in the areas of ratemaking and antitrust immunity. The limits of discretion were intended to be narrow indeed--or at least so I thought. It is this aspect of the Commission's recent activities that I find disturbing--particularly the proposal to withdraw antitrust immunity for shipments under 1000 pounds.

In order to figure out what Congress intended with respect to collective ratemaking, one must look at the law before it was changed and then look at how we changed it. The applicable provision is in section 10706 of title 49 of the United States Code. One of the principal motivations to pass the legislation was that under the old law the Commission had so much discretion to approve or deny antitrust immunity that Congress wanted to tighten the limits on Commission action. In fact, a common sense reading of the old law would lead one to believe that, if anything, there was a presumption against approval of a collective ratemaking agreement:

> "The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title..."

Notice that approval is to come only if the collective ratemaking agreement can be shown to further the transportation policy of Congress, i.e., not just be neutral with respect to the policy. With a policy of promoting efficiency and economy and reasonable rates (all concepts within the old policy statement) the proof should have been substantial.

When, in 1978, the Commission began to propose the disapproval of many collective ratemaking agreements under this old law, there was a flurry of political activity. Virtually every party agreed that the old law was vague and that the degree of discretion should be eliminated. The parameters of the proposed changes were very wide. It is instructive to look at the alternatives proposed to Congress in order to understand precisely what Congress had in mind in passing the legislation:

> Senator Kennedy and the Administration--Their solution was the most direct: eliminate the ICC's authority to grant immunity without any qualifications. (S. 1400)
>
> Interstate Commerce Commission--Its proposal was to limit its own discretion by making the standards for approval very hard to meet: "The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement (1) will further one or more goals of the national transportation policy of section 10101 of this title, and (2) will not have anticompetitive effects. If anticompetitive effects are found, then the Commission shall approve the agreement only when it finds that the national transportation policy benefits to the public interest outweigh the anticompetitive injury to the public interest which will result from the agreement." (Testimony of Chairman A. Daniel O'Neal before the Senate Commerce Committee, June 27, 1979).
>
> American Trucking Associations--The ATA wanted to eliminate discretion also, but in a way to assure the continuation of collective ratemaking: "Such agreements...shall be approved by the Commission unless the Commission finds that an agreement violates this section or will not further the transportation policy of section 10101 of this subtitle." (Testimony of C. James McCormick before the Senate Commerce Committee, June 26, 19~~83~~77.)

In choosing from among these alternatives, there is no doubt which approach Congress endorsed. The final language is almost identical to that proposed by the supporters of continued collective ratemaking. In fact, one could make a pretty fair argument that the final language was even more restrictive than even the ATA had hoped for:

> "Such agreements...shall be approved by the Commission upon a finding that the agreement fulfills each requirement of this subsection, unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101(a) of this title."

There is no question that the approach approved by Congress was the most restrictive one with respect to assuring approval of the agreements that complied with the provisions of the new law. But if the plain language of the legislation is not sufficient proof, the report of both Committees, using identical language should eliminate all doubts: "In other parts of the rate bureau section of the bill, the Committee has proposed to reduce the amount of discretion that the Commission has to approve or disapprove rate bureau agreements. This reduction in Commission discretion goes hand-in-hand with the other reforms proposed in the rate bureau process. This is a clear example of Congress defining the limits which it believes the Commission should follow and reducing the discretion of the Commission to expand those limits. When the parties to an agreement meet all the conditions in the section, there is a presumption that the Commission should find the agreement to be in the public interest." (Senate Commerce Committee Report 96-641, pg. 14; House Public Works Committee Report 96-1069, pg. 29.)

Frankly, I am not sure how we could have been more explicit with respect to Congressional intentions. The restrictions on rate bureau activities were very clearly spelled out. The authority to collectively set Congressionally defined single line rates clearly ends on a precise date. Virtually every word in the new section of the Act was challenged, debated, worked, and reworked before the final language was agreed upon.

It is against this background that I am so surprised to see the Commission once again challenging the rate bureau agreements as it was doing in 1978 prior to the legislation being passed. I remember in 1979 delivering a speech in Reston, Virginia at which most of the membership of the Commission was attending. After consulting with the distinguished former Chairman of this Committee, Biz Johnson, I conveyed a message to the Commission from Congress in the strongest terms I could: it is the role of Congress to set the policy and the role of the Commission to implement it. Perhaps it is time to reconvey that message.

I don't make these remarks out of any hostility for the current members of the ICC. I appreciate that they are striving to acheive what they truly believe is most in the public interest. But the fact is that it is Congress which sets the policy and the Commission should not be challenging that policy simply because it doesn't like it. While the Commission may feel it technically has the authority to disapprove all collective ratemaking agreements (after all immunity is not automatic), I simply cannot believe that it truly thinks that this is the intent of Congress.

Others can speak with more authority about the potential impact of eliminating all immunity for discussion of rates on LTL shipments of 1000 pounds or less. I certainly know enough after several years of looking at this industry to understand that this represents the heart of the entire system. This is not a mere carving out of a particular commodity or class of service. This would be a fatal blow to the system. The Commission, I am sure, understands this.

What I can speak with authority on, however, is the notion of the ICC that the report of the Motor Carrier Ratemaking Study Commission somehow justifies the reconsideration of all the §5a agreements. On this point, the ICC is just plain wrong.

In the first place, the Ratemaking Study Commission was formed to study the issue and report to Congress and the President. The only role for the ICC was to be of assistance to the Study Commission. The findings of the Study Commission have absolutely no legal standing of any kind. They are simply the recommendations of a single group looking at the issue. In creating the Study Commission we were careful to explain precisely what we envisioned the report of the group would be used for: "This study is designed to provide a report to the Congress not later than 1 year before the provision on the elimination of single-line antitrust immunity takes effect. The study will be helpful in assisting the Congress in its determination as to whether future legislative changes will be necessary." (Report of the Senate Commerce Committee 96-641, pg. 15.)

Secondly, the record should show that the Study Commission--at least the one that was originally appointed, sat through the long hearings, studied the record, debated the issues, and at the end of a year and a half voted on the final recommendation--was evenly divided on whether to recommend a continuation of antitrust immunity. I was a member of that Study Commission. I studied that record. I attended hearings of the Study Commission. And at the end of the process, I and four of my colleagues simply couldn't agree with the other five members on a final recommendation.

At the time, I proposed what I know was the most accurate description of the views of the Study Commission--an agreement to disagree. I proposed that we announce quite simply that there was no consensus as to future policy direction. This was precisely where the Study Commission stood at the end of the process.

As you know, however, when I was not reelected and left the Senate, another member of the Senate was appointed who subsequently helped form a slim 6-4 majority in favor of the final "official" recommendation of the Study Commission. This is hardly the process and substance out of which mandates are made. The ICC has no mandate from the Study Commission. Even if the decision had been 10-0, however, it still would have no mandate. Mandates to regulatory agencies should come from Congress, not Study Commissions.

Finally, with your permission, I would like to attach a copy of the brief statement that I asked be included in the report of the Study Commission explaining my vote. It deals more directly with the substance of the collective ratemaking debate and I hope you will consider the views expressed as you consider further legislative proposals.

My own personal view is that the best possible legislation would be one in which the remaining entry barriers are eliminated but the ratemaking provisions remain fairly intact. The current entry barriers create nothing more than red tape, legal fees, and a disincentive to provide marginal services that would require more authority. Then I would allow complete pricing freedom for any carrier setting its rates outside the collective ratemaking system. Finally I would keep the current law with respect to antitrust immunity and allow the rate bureaus to continue to operate, subject to regulation of those rates by the ICC. In this way, shippers would have double protection--by the ICC within the collective ratemaking system, and by access to an unlimited number of carriers who could choose to operate outside the collective ratemaking system.

STATEMENT OF SENATOR HOWARD W. CANNON - April 8, 1983

I have asked for the opportunity to submit additional comments because I think it is important for the record to show that the Ratemaking Commission members who participated throughout the duration of the study were evenly divided on the final recommendations and Report. I was a member of the Study Commission from its very beginning through the drafting and completion of the staff Report. When the original ten members of the Commission met in December 1982 to vote on the final recommendations, we were deadlocked 5-5. I was one of those who did not endorse what has become the majority Report of this Commission.

At that December meeting, I proposed that the Study Commission approve a finding which, in effect, would be an agreement to disagree. It would have accurately described the disposition of the Commission. After more than a year of study, against the background of years of Congressional hearings and debate, we simply were unable to reach a consensus. I happen to believe that this impasse did not represent a failure of the Commission. Rather, it reflects the complexity and difficulty of the issues.

I realize that the position I have taken in the Study Commission has puzzled many of those with whom I worked closely to enact the Motor Carrier Act of 1980. In many ways, it is to time that I address these comments. These people deserve an explanation.

By way of background to those not familiar with the issue, I was and continue to be a strong advocate of deregulation of the transportation industry. As author and principal sponsor in the U.S. Senate of both the Airline Deregulation Act and the Motor Carrier Act of 1980, I have a pro-deregulation record of which I am proud. I want to explain why I consider that record to be consistent with my vote in the Ratemaking Study Commission.

If I could boil down my views to a simple explanation, it would be this: When I began working on the issue of promoting competition in the trucking industry, I started with the notion that entry was 90 percent of the problem. After more hearings and study than I care to remember, and after observing the results of the Motor Carrier Act of 1980, I have come to the conclusion that I was wrong. Entry was 99 percent of the problem.

By "entry" I am referring to the regulatory requirements of the Interstate Commerce Act that required certain "public interest" standards be met before a firm would be allowed to engage in the trucking business. These regulatory restraints on engaging in interstate trucking were the reason that there was so little price competition prior to 1980.

To put this in perspective, I think it would be helpful to look at actual experience in deregulation of entry. My first experience with protective regulation was the airline industry. Prior to 1978 and the passage of the Airline Deregulation Act, this was not a competitive industry. Rates among airlines were absolutely identical (with only rare exceptions). Price competition was virtually unknown. Was this a result of collective ratemaking and antitrust immunity? Of course not. The airlines have never had antitrust immunity to set rates. The lack of price competition was due instead to a regime of very restrictive entry regulation that allowed the industry to behave like a cartel even though they never sat down to discuss prices. And lo and behold, when entry restrictions were lifted, price competition began in earnest.

More importantly, look at the trucking industry since 1980. How can one explain the unprecedented rate competition among trucking firms since July 1980? Has this been the direct result of the elimination of antitrust immunity? Of course not. The motor carrier industry continues to have the same degree of immunity from the antitrust laws that it has had since 1948. The difference is entry -- liberalized entry.

It is the apparent lack of perspective about the entry environment that causes me to differ with the majority Report. The Report analyzes the collective ratemaking issue in the context of traditional regulatory practices of restrictive entry, rather than in the context of the current reality -- much more open entry into trucking.

In saying this, it is not my intent to throw stones at the staff-drafted Report. I may differ with the minority views on this because I think the staff did a very credible job in putting together the best case that can be made for eliminating antitrust immunity. The end product is an excellent Report produced by a highly skilled staff. In fact, I am sure that the staff could have put together a Report of equal merit which supports the continuation of antitrust immunity.

Let's face it, this is one of those issues where theory and data often diverge, giving rise to the anomaly that an equally persuasive case could probably be made with the same data for either side. Hence, I would advise Members of Congress who are going to have to grapple with this issue not to become embroiled in detailed discussions and analyses of the statistics presented by either side. There are more fundamental points to consider.

Ironically, the strongest arguments in favor of entry deregulation are the strongest arguments as to why collective ratemaking is simply not a grave threat to the public. Those of us who have promoted entry freedom have argued for years that the structure of the trucking industry is inherently competitive. That is, capital barriers to entry are sufficiently low that entry by new firms is relatively easy. Now I realize that as one moves from looking at truckload carriers to less-than-truckload carriers, the case becomes less clear. But suffice it to say, many totally unregulated businesses in this country have far higher capital barriers to entry than even the LTL portion of the trucking industry. The same, of course, is true for economies of scale. I have yet to see a convincing study that shows significant economies of scale in the trucking industry.

In this kind of environment, unless there are regulatory constraints on entry, it is virtually impossible to restrict price competition. In fact, this is probably more true for trucking than most other industries. For one could hardly envision businesses that possess more mobile capital resources than this one -- most of the assets are literally on wheels. This means that virtually every truck on the road is a competitor or potential competitor of every other truck. Thanks to the Motor Carrier Act and regulatory changes by the Interstate Commerce Commission, the potential competitors include private as well as common and contract carriers. How could companies "fix" prices in such an environment? The simple answer is that they can't.

Indeed, in some ways the tables have really been turned. Large shippers today can demand very favorable prices. Of course, some of this has to do with current excess capacity. But much more has to do with the degree of competition in the industry resulting from entry reforms. If there is any argument against collective ratemaking that should make sense, it is that collective ratemaking could be used to the disadvantage of shippers with lesser market power -- the shippers of small shipments. Yet, some of the strongest pporters of collective ratemaking are shippers of small shipments who argue that the system protects them against unreasonable and discriminatory rates.

The fact is that the elimination of rate bureaus would end up increasing transportation costs for small shippers. It would do so by shifting to the shipper the burden of searching for and determining what rates exist for a particular service. For the large shipper, any increased cost in obtaining information about competitive alternatives is small compared to the total shipping bill. A large shipper with a traffic department and computer technology can and probably already does this itself. But a small shipper cannot. Sales representatives of trucking firms don't spend much time soliciting small shipments. This is do-it-yourself territory.

The problem for the small shipper is especially exacerbated if the commodity classification system is eliminated as well. Right now, with the system of uniform commodity classifications, a shipper has a point of reference for comparing prices and services. Without a uniform system of commodity classifications, this would dramatically increase the burden on the small shipper in shopping for transportation services. I don't think people realize how much shipping in this country is done by small business people with no freight expertise. I didn't before I studied the issue, but I do now. These shippers must be considered.

The point of all this is that there may, in fact,be certain kinds of logistical and bureaucratic efficiencies built into the rate bureau system that actually benefit shippers substantially. Where the rate bureau system creates inefficiencies that cost shippers money, I have no doubt whatsoever that competition will lead to reducing or eliminating these inefficiencies. But where the system achieves benefits for both carriers and shippers that cannot be duplicated, then there must be a better reason for eliminating such benefits than the abstract concept of the purity of the antitrust laws.

Some people argue that the existence of specific and thoroughly defined commodity classifications were used to restrict carrier operating authorities and thereby stifle competition. However, any such limitation of competition which may have existed was the result of entry restrictions and had nothing to do with collective ratemaking. Precise and minute commodity definitions were, in fact, a way of dividing up markets when regulatory authority was highly restricted. That is, the more restrictive the actual operating authority, the less competition took place among carriers. Detailed commodity descriptions aided that process.

But once again, let's look at the current marketplace. Tariff simplification is the passion of the day. Rate cards are appearing with prices based exclusively on distance, dimensions, and weight. Many carriers are moving to much broader commodity classifications. Is this process a result of elimination of antitrust immunity? No. It is a result of entry relaxation. These are competitive marketing practices. Carriers are using these new simplified tariffs today despite the fact that they possess the legal authority to agree among each other not to use them. But they can't reach such an agreement and the reason is that the industry is simply too competitive.

Actually, if there is one area in which all members of the Commission probably agree -- albeit, for vastly different reasons -- it is that there should not be a distinction made in the law between single and joint-line rates. Some see the issue as a practical one. Others see it as a philosophical one. I respect both views.

On the practical side, the elimination of single-line immunity is likely to result in the demise of joint-line discussions as well. As a lawyer, I would take little solace from general testimony before this Commission by the Justice Department concerning the legality of joint-line discussions. I would advise any client to use extreme caution in discussing rates of any kind if single-line immunity is eliminated.

On the philosophical side, I think there is some real merit in the majority view that if part of the immunity is to be eliminated, it all should be. Congress should be bold enough to let the system remain intact or to do away with it altogether. I think we made a mistake in the Motor Carrier Act of trying to draw an artificial line between single- and joint-line rates. I [illegible] for letting the system remain intact.

In particular, I happen to share quite strongly the views expressed in the last meeting of the Study Commission by Congressman Seiberling in support of delaying action on this matter. In two short years, the trucking industry has been hit squarely in the face with four of the most significant changes that it has ever faced: (1) substantial deregulation of entry; (2) massive increases in fuel taxes and user fees; (3) an ERISA amendment that makes it more expensive to go out of business than to stay in business, even when the carrier is losing money; and (4) the worst decline in traffic ever experienced by the industry due to the current recession. Now, on top of all this, the Study Commission majority wants to eliminate the rate bureau system. I would suggest that this is just too much. If we want to increase competition even more, let's eliminate the remaining entry controls. But I am convinced that the competitive benefits of eliminating antitrust immunity don't outweigh the economic costs.

With all this said, I want to make it clear that I don't believe that traditional collective ratemaking as we knew it prior to 1980 -- that is working in combination with restricted entry -- was in the public interest. But that era is past. It simply cannot be resurrected without once again limiting entry into the trucking business. It is because I believe so strongly in the benefits of competition, that I have no fears about abuses by the rate bureaus. By placing rate bureaus in the sunshine and by giving carriers the opportunity to compete with each other, the marketplace will discipline the collective ratemaking system.

But while rate bureaus will undoubtedly change in character, they can remain valuable resources for both carriers and shippers. Tariff publishing and commodity classifications are two of the most obvious benefits. Again, despite the assurances of the Justice Department, I believe that excessive caution by carriers in the absence of antitrust immunity will jeopardize even these functions.

ROBERT W. DAVIS
11TH DISTRICT, MICHIGAN

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ARMED SERVICES
MERCHANT MARINE AND
FISHERIES

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House of Representatives
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CALL TOLL FREE IN MICHIGAN:
1-800-692-0982

November 29, 1983

The Honorable Glenn Anderson
Chairman
Subcommittee on Surface Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed is a letter from my constituent, Mr. Joe Myers, who expresses concern about actions being taken with regard to rate-making by the trucking industry.

I would appreciate knowing if the Subcommittee has any proposals before it or anticipates any proposals which would address Mr. Myers' concerns.

Thank you for your cooperation.

Sincerely,

Bob Davis
ROBERT W. DAVIS
Member of Congress

RWD/kcj

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November 5, 1983

The Honorable Robert W. Davis
U. S. House of Representatives
1124 Longworth House Office Building
Washington, DC 20515

Dear Mr. Davis:

Due to the Deregulation Act of 1980 and the very poor economy experienced by this country in the past several years, our industry has suffered tremendously with many trucking companies going broke. Additionally, we are now inappropriately under attack by the FTC and Justice Department, relative to collective rate making at the intrastate level which has been an effective way of formulating rates, so that they are fair and equitable to the trucking companies and protective of the shipping public. This collective rate making process needs to be preserved to maintain our fine transportation system. For almost 50 years, we have practiced collective rate making in the State of Michigan without harming the public or unduly rewarding the trucking industry. We feel that this proposed legislation provides us with the necessary protection to continue operating as we have in the past, which has been in the public interest. Arbitrary attacks by the FTC and the Justice Department have not been warranted in the past and are not currently warranted, and with this protection, we will avoid this unnecessary conflict in the future.

Very sincerely yours,

STEVENS VAN LINES, INC.

Joe Myers

Joe Myers, Terminal Manager

JM:dc

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BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON SURFACE TRANSPORTATION

COMMENTS OF
PORT NORRIS EXPRESS CO., INC.
ON INTERSTATE COMMERCE COMMISSION
IMPLEMENTATION OF THE MOTOR CARRIER ACT OF 1980

George Garrison
President
Port Norris Express Co., Inc.

Dated: November 7, 1983

BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON SURFACE TRANSPORTATION

COMMENTS OF
PORT NORRIS EXPRESS CO., INC.
ON INTERSTATE COMMERCE COMMISSION
IMPLEMENTATION OF THE MOTOR CARRIER ACT OF 1980

My name is George Garrison, and I am President of Port Norris Express Co., Inc. (Port Norris), 270 North Avenue, Port Norris, N.J. 08349. As President of Port Norris, I am active in the day to day operations of the company, and am familiar with its operations. As President, I oversee all activities on behalf of Port Norris, including regulatory matters involving the Interstate Commerce Commission and other agencies. I solicit shipper traffic, oversee all financial records, dispatch equipment from time to time, and in general am involved in every aspect of the business of Port Norris. Information contained in this statement is based upon my personal knowledge, as well as upon information received by me in the normal course of conducting the business of Port Norris. In addition to being President of Port Norris, I am also treasurer, a director, and the majority stockholder.

Port Norris has held authority from the Interstate Commerce Commission in Docket No. MC-110841 since 1950, and has actively conducted operations under that authority. While Port Norris specializes in the transportation of bulk commodities, we also operate other types of equipment. Presently, we operate 27 tractors, 25 pneumatic tank trailers, 28 flat-bed trailers, 16 dump trailers and 7 van trailers. During 1982, the gross revenue of Port Norris in interstate or foreign commerce was $2,454,687.80.

The purpose of giving this statement is to demonstrate to the Subcommittee the problems which Port Norris has encountered as a result of what I consider to be improper implementation of the Motor Carrier Act of 1980 by the ICC.

As a small carrier, operating in a highly specialized field, with investment in expensive bulk equipment, Port Norris has been concerned with the ICC's policy of opening the floodgates for new carriers to enter the regulated motor carrier field. The effect on the health of our segment of the motor carrier industry has been pronounced. We have faced destructive rate competition, from carriers that used owner-operators exclusively, and did not care about whether their owner-operators made enough money to stay in business. A number of these carriers have gone bankrupt, or have simply closed their doors. Port Norris uses union drivers for company equipment, and also uses owner-operators to augment our company-owned fleet.

As a carrier interested primarily but not exclusively in bulk transportation, Port Norris became concerned about the ICC's overly broad entry policies, particularly insofar as the ICC attempted to make automatic grants of authority to transport commodities in bulk to general commodity carriers, as well as to carriers requesting specified commodities authority. An example of the latter would be a request for authority to transport clay, concrete, glass and stone products. While the real interest of the carrier might be in transporting concrete blocks or panes of glass, the ICC has frequently insisted that the carrier accept bulk authority as well.

Port Norris has been active in protesting operating rights cases at the Commission level. During the period January 1 - June 30, 1983, Port Norris filed approximately 120 protests in proceedings that are now administratively final. The thrust of the protests was that no authority to transport bulk commodities was warranted. In administratively final proceedings, the Commission ruled in 20 of these cases in a manner that substantially protected our interests. Port Norris withdrew its protests in 18 cases, upon reassessment of its interest in them. However, of that number, five applications were reduced in scope as a result of communications between Port Norris and the applicant. Thus, in somewhat over 20 percent of its protests, Port Norris achieved some or all of our goal of eliminating commodities in bulk or a major part of the commodity description in conflict with our authority. Our percentage of success was greater during 1982.

It has been and remains the opinion of Port Norris that a majority of the ICC has been hellbent to deregulate the trucking industry, contrary to the mandate of the Motor Carrier Act of 1980. I respectfully call your attention to a speech given by Commissioner Heather Gradison, which is attached as Appendix A, and which shows that there is no way in my opinion that she would ever vote in favor of a protestant in a motor carrier operating rights proceeding. In all fairness, Commissioner Gradison should voluntarily disqualify herself in motor carrier operating rights proceedings involving Port Norris. The bias which is exhibited in the speech, even though stemming from deeply held personal convictions in favor of total deregulation, literally speaks for itself.

As a result of manifest Commission bias and prejudice against protestants such as Port Norris, we have taken a number of cases to court, seeking judicial review and reversal of ICC decisions. In the cases which have been decided, which are all in the Third Circuit, two were reversed and remanded by court decision, and four were voluntarily recalled by the ICC, but only after the Commission's hand was called by the filing of the action in court. One case was affirmed by a two to one decision, with the dissent being written by Judge Arlin Adams, one of the most respected judges on the Third Circuit. Five other cases were affirmed without opinion. One case was dismissed - erroneously in our opinion - because of the petition for judicial review being prematurely filed. We are considering whether to file a petition for writ of certiorari in the Supreme Court of the United States, and have obtained an extension of the deadline for filing of same until December 29, 1983. But our hope for rectification of the general nonfeasance by the ICC is with you and other members of Congress.

The foregoing statistics clearly show that the ICC is making a lot of errors in deciding cases. Unfortunately, standards of judicial review are such that it is impossible to get a reviewing court to reverse an error of judgment on the part of the Commission where discretion has been delegated, even if the court does not agree with the Commission's judgment. In the period preceding 1976, the ICC's decisions were reversed by a reviewing court in approximately 15 percent of the cases. As can be seen from the foregoing information regarding court cases brought by Port Norris, 50 percent have been reversed.

Mr. Chairman, something needs to be done to clean up the mess that presently exists at the ICC. The ICC needs to be reminded that the motor carrier industry has not been deregulated, and that granting of substantially all applications that are filed is wrong. Even Sen. Packwood understands that we have not been deregulated. See Appendix B. The ICC needs to be told that Section 5 of the Motor Carrier Act of 1980, regulating entry, should not be ignored. Not a single protestant has been held by the ICC to carry its burden of proof of showing that a new grant of authority will not be consistent with the public convenience and necessity. Those cases we have "won" are those that were inherently deficient but that were nevertheless initially granted by the ICC. Even the Chairman of the Commission, at the Senate Commerce Committee Oversight Hearings, justifiably called the actions of his agency a sham. We share in this opinion, but do not agree that the agency should be abolished. Instead, it should be admonished to do its job.

The ICC is charged with responsible rate regulation. Its actions have been notable by their absence. Below cost rates have been and are being charged. Common carrier rates that have never been on file have been and are being charged by carriers that are supposed to be regulated by the Interstate Commerce Commission. There is practically no enforcement by the ICC of the law, even though enforcement falls clearly within the duties of the ICC.

There is an old saying that you can't make a silk purse out of a sow's ear. Perhaps the present Commission cannot be rehabilitated. I prefer to think that the real problem may be that the Executive Branch is attempting to exert, directly and indirectly, pressure on the Chairman and other members of the Commission to do things that are beyond the law. The law says regulate but the Administration says deregulate. Our industry is in a turmoil. Bankruptcies are sky high. Now - not later - is the time for Congress to call the Commission to task.

REMARKS OF

COMMISSIONER HEATHER J. GRADISON
INTERSTATE COMMERCE COMMISSION

BEFORE

THE WASHINGTON CHAPTER
OF
THE WOMENS TRANSPORTATION SEMINAR

WASHINGTON, D.C.

OCTOBER 20, 1983

APPENDIX A

THANK YOU FOR THE INVITATION TO BE WITH YOU HERE TODAY. LAST MONTH I HAD THE PLEASURE OF PARTICIPATING IN A PANEL CHAIRED BY OUR LOCAL PRESIDENT, DEBBIE LIPMAN, AT THE WTS ANNUAL CONVENTION IN CINCINNATI, AND THE PEOPLE I SAW THERE REAFFIRMED MY OPINION THAT WTS IS THE MOST DYNAMIC TRANSPORTATION ORGANIZATION IN THE COUNTRY TODAY. OF COURSE, IT IS A SPECIAL PLEASURE TO BE HERE WITH THE WASHINGTON CHAPTER, WHICH INCLUDES SO MANY FRIENDS AND FAMILIAR FACES.

THE TOPIC I HAVE CHOSEN FOR TODAY IS, "WHEN WILL THE STAGGERS ACT AND THE MOTOR CARRIER ACT OF 1980 BE IMPLEMENTED?" I IMAGINE SOME OF YOU FIND THE TITLE CONFUSING, SINCE BOTH ACTS WERE SIGNED SEVERAL YEARS AGO, AND MANY OF THEIR PROVISIONS HAVE PASSED THROUGH THE MAZE OF PETITIONS FOR RECONSIDERATION AND LAWSUITS AND HAVE TAKEN EFFECT. BUT WHAT I WANT TO TALK ABOUT TODAY IS NOT THE LEGAL DELAY IN IMPLEMENTING THE STAGGERS AND MOTOR CARRIER ACTS, ALTHOUGH EVERY TIME WE TRY TO MOVE FORWARD UNDER THE ACTS WE SEEM TO SPEND MONTHS OR YEARS IN PROCEEDINGS AND LITIGATION. RATHER, I WANT TO TALK ABOUT THE MENTAL DELAY. I WANT TO ASK HOW LONG WILL IT TAKE BEFORE SOME SHIPPERS, CARRIERS, AND TRANSPORTATION INDUSTRY ORGANIZATIONS STOP LOOKING OVER THE STERN INTO THE SUNSET OF REGULATION AND START STEERING A COURSE INSTEAD TOWARD THE DAWNING ERA OF DEREGULATION?

I SHOULD SAY AT THE OUTSET THAT A GROWING PORTION OF THE TRANSPORTATION INDUSTRY HAS EMBRACED DEREGULATION, AND IS ADJUSTING TO DOING BUSINESS IN A DEREGULATED ENVIRONMENT. HOWEVER, A FEW TRANSPORTATION COMPANIES AND ORGANIZATIONS HAVE NOT YET COME ABOARD, AND THEY ARE CAUSING DISRUPTIONS IN THE TRANSITION TO DEREGULATION GREATLY OUT OF PROPORTION TO THEIR NUMBERS. A GOOD EXAMPLE OF THIS INVOLVES THE DELAYS BEING CAUSED BY A FEW COMPANIES THAT CONSTANTLY PROTEST APPLICATIONS FOR MOTOR CARRIER AUTHORITY.

EACH MONTH, THE COMMISSION PROCESSES ROUGHLY 1,100 APPLICATIONS FOR MOTOR CARRIER OF PROPERTY AUTHORITY. A COUPLE OF YEARS AGO, MANY OF THESE APPLICATIONS WERE OPPOSED, BUT TODAY ABOUT 85 PERCENT ARE UNCONTESTED AND THE AUTHORITY SOUGHT IS QUICKLY GRANTED. BUT, BELIEVE IT OR NOT, 15 PERCENT OF THE APPLICATIONS FOR AUTHORITY ARE STILL BEING PROTESTED. THESE PROTESTS GENERALLY ARE BASED UPON ARGUMENTS AND CONCEPTS THAT HAVE BEEN CONSIDERED AND REJECTED BY THE COMMISSION MANY TIMES SINCE 1980, AND SO THEY SELDOM ARE SUCCESSFUL. NONETHELESS, THEY CONSUME SCARCE ICC STAFF RESOURCES, WASTE YOUR TAX DOLLARS, CAUSE THE APPLICANTS TO SUFFER NEEDLESS AND COSTLY DELAYS AND, INCIDENTALLY, WASTE THE PROTESTANTS' MONEY AS WELL.

BUT THAT DOESN'T STOP THESE FEW COMPANIES FROM CONTINUALLY PROTESTING. RECENTLY, OUT OF CURIOSITY, I REVIEWED THE STATISTICS CONCERING CASES THAT WERE PROTESTED DURING MAY OF 1983, AND I'D LIKE TO SHARE WITH YOU WHAT I FOUND. DURING THAT MONTH, OF THE CASES SUBMITTED TO THE REVIEW BOARDS FOR DECISION, 201 MOTOR CARRIER OF PROPERTY APPLICATIONS WERE OPPOSED. THERE ARE PRESENTLY MORE THAN 27,000 MOTOR CARRIERS OF PROPERTY IN THE UNITED STATES, AND MOST OF THEM WERE POTENTIAL PROTESTANTS IN ONE OR MORE OF THESE CASES. YET ONLY 41 OF THESE CARRIERS FILED EVEN ONE PROTEST. MORE AMAZING YET, THREE CARRIERS WERE INVOLVED IN 165 OF THE PROTESTS, OR MORE THAN 80 PERCENT OF THE TOTAL. MOREOVER, THESE THREE, EITHER BY THEMSELVES OR IN COMBINATION WITH EACH OTHER, BROUGHT 114 OF THE PROTESTS, OR MORE THAN 55 PERCENT. PUT ANOTHER WAY, ONE-ONE HUNDREDTH OF ONE PERCENT OF THE NATION'S CARRIERS WERE RESPONSIBLE FOR MORE THAN HALF OF THE OPPOSED AUTHORITY CASES DURING MAY! WHO WERE THEY?

WELL, THE NUMBER ONE PROTESTANT -- BY FAR -- WAS BROWN TRANSPORT. IT PARTICIPATED IN 101 PROTESTS, AND IT WAS THE ONLY PROTESTANT IN 77 CASES. NEXT CAME STEERE TANK LINES, WHICH PARTICIPATED IN 34 CASES AND WAS THE SOLE PROTESTANT IN 16 OF THEM. THE LAST OF THE THREE WAS PORT NORRIS, WHICH PARTICIPATED IN 30 CASES AND WAS BY ITSELF IN 14 OF THEM. NOW I'M NOT DENYING THAT THESE CARRIERS HAVE THE LEGAL RIGHT TO PROTEST. BUT I WOULD SAY THIS. THE PAPER CONTAINING THE 114 PROTESTS THESE THREE COMPANIES FILED, IF LAID END-TO-END, EASILY WOULD STRETCH FROM THE ICC TO THE WASHINGTON MONUMENT. THE NEW ARGUMENTS EXPRESSED IN THE 114 PROTESTS, LAID END-TO-END, WOULDN'T STRETCH ACROSS THE SIDEWALK!

AS AN ASIDE, PERHAPS THE MOST DISCOURAGING PROTEST I'VE SEEN CAME ACROSS MY DESK THIS MONTH. IT WAS BROUGHT BY A 2-MONTH-OLD CARRIER -- D.O.T. TRANSPORT -- THAT, THANKS TO THE RELAXED ENTRY STANDARDS THAT NOW APPLY TO THE MOTOR CARRIER INDUSTRY, WAS ABLE TO OBTAIN A LICENSE TO HANDLE GENERAL COMMODITIES NATIONWIDE. AUTHORITY OF THAT SCOPE TOOK DECADES TO ACHIEVE UNDER THE OLD REGULATORY SYSTEM. HAVING RECEIVED ITS AUTHORITY UNDER THE RELAXED ENTRY STANDARDS, D.O.T. PROTESTED AN APPLICATION FILED BY AN OLD-LINE, ESTABLISHED CARRIER THAT ALREADY HAD BROAD CONTRACT AND COMMON CARRIER AUTHORITY. THIS ESTABLISHED CARRIER WAS REQUESTING GENERAL COMMODITY, NATIONWIDE AUTHORITY -- THE SAME AUTHORITY D.O.T. HAD BEEN GRANTED JUST TWO MONTHS EARILER. D.O.T. MADE ALL THE OLD REGULATORY ARGUMENTS ABOUT THE SCOPE OF THE EVIDENCE AND POTENTIAL TRAFFIC DIVERSIONS. OF COURSE, ITS PROTEST WAS DENIED BECAUSE IT WAS INCONSISTENT WITH CURRENT LAW. HOW QUICKLY AN ENLIGHTENED APPLICANT CAN BECOME A PROTECTIONIST CONVERT!

UNFORTUNATELY, SOME OF THE PROTESTED CASES DON'T STOP AFTER ONE, OR TWO, OR THREE ICC DECISIONS. SOME GO TO COURT. IN FACT, ANOTHER TITLE FOR THIS SPEECH COULD HAVE BEEN "DEREGULATION LEADS TO LITIGATION." SINCE 1981, THE COMMISSION HAS BEEN INVOLVED IN ROUGHLY 800 LAWSUITS. ONCE AGAIN, A DISPROPORTIONATE NUMBER HAVE BEEN FILED BY A TINY GROUP OF CARRIERS. IN FACT, 10 CARRIERS -- OR ABOUT THREE-HUNDREDTHS OF ONE PERCENT OF THE CARRIERS LICENSED BY THE ICC -- HAVE BROUGHT 160 LAWSUITS, OR ABOUT 20 PERCENT OF THE TOTAL. WHO ARE THESE CARRIERS?

WELL, OUR CHAMPION PROTESTANT -- BROWN TRANSPORT -- DOESN'T MAKE THE ROGUE'S GALLERY OF REPETITIVE LITIGANTS. THAT "HONOR" GOES TO STEERE TANK LINES, WHICH HAS BLESSED US WITH 56 LAWSUITS. THE OTHER MEMBERS OF THE TOP TEN ARE: PORT NORRIS, CHEMICAL LEAMAN, ROGERS CARTAGE, ERICKSON, WHEATON VAN LINES, ALLIED VAN LINES, MAYFLOWER, GLOBAL VAN LINES, AND RTC.

I CERTAINLY WOULD NOT WANT TO DENY ANYONE THE RIGHT TO PARTICIPATE IN COMMISSION PROCEEDINGS, OR TO GO TO COURT TO CHALLENGE THE RESULTS. BUT OFTEN THE PROTESTS AND LAWSUITS BROUGHT BY THESE INDIVIDUAL COMPANIES ARE MORE OF A NUISANCE THAN AN EXERCISE OF INDIVIDUAL OR LEGAL RIGHTS. TRUE, THEY WASTE YOUR TAX DOLLARS AND MINE. FIVE ATTORNEYS IN OUR OFFICE OF GENERAL COUNSEL SPEND THEIR TIME DEFENDING AGAINST THESE LAWSUITS,AND A VARIETY OF ICC EMPLOYEES SPEND TIME PROCESSING THE REPETITIVE PROTESTS FILED BY THIS HANDFUL OF CARRIERS. MORE SERIOUSLY, THOUGH, THESE NEVER-ENDING PROTESTS CAUSE THE APPLICANTS, WHO HAVE EVERY RIGHT UNDER THE MOTOR CARRIER ACT AND ICC REGULATIONS TO TRY TO EARN A LIVING IN THE TRUCKING INDUSTRY, FROM GETTING STARTED IN BUSINESS, AND THE PROTESTS AND LAWSUITS CAUSE THESE PEOPLE WHOLLY UNNECESSARY LEGAL EXPENSE. FINALLY, THEY DIVERT THE ATTENTION OF THE COMPANIES, BRINGING THEM FROM THE TASK OF PREPARING TO SERVE SHIPPERS IN A COMPETITIVE, DEREGULATED ENVIRONMENT.

MOTOR CARRIERS AREN'T THE ONLY PARTIES DISRUPTING THE TRANSITION TO DEREGULATION WITH FRIVOLOUS PROTESTS. MY NATIVE STATE OF TEXAS QUALIFIES FOR A CATEGORY OF ITS OWN IN THAT REGARD. WHILE I CAN'T CLAIM THAT ALL OF THE STATE REGULATORY AUTHORITIES HAVE EMBRACED THE DEREGULATORY MEANING OF THE MOTOR CARRIER AND STAGGERS ACTS, NO ONE CAN RIVAL THE RAILROAD COMMISSION OF TEXAS FOR ABSOLUTELY, POSITIVELY BEING UNABLE OR UNWILLING TO GRASP THE POINT OF THOSE ACTS. AS WITH THE MOTOR CARRIER PROTESTS, WE DON'T BEGRUDGE ANYONE THE RIGHT TO BRING A COMPLAINT OR EXPRESS A GRIEVANCE. MY MESSAGE IS NOT "DON'T BOTHER US WITH PROTESTS."MY COMPLAINT REGARDING MOTOR CARRIER PROTESTS, AND THE RAILROAD COMMISSION OF TEXAS, STEMS FROM THE FACT THAT THEY SEND US THE SAME CASE OVER AND OVER AGAIN.

RECENTLY, THE RAILROAD COMMISSION OF TEXAS HAS BEEN REJECTING RAILROAD CONTRACTS WITH SHIPPERS THAT COMPLY, IN EVERY RESPECT, WITH THE PROVISIONS OF THE STAGGERS ACT AND FEDERAL REGULATIONS COVERING SUCH CONTRACTS. IN CASE AFTER CASE, THE TEXAS COMMISSION HAS REJECTED ROUTINE CONTRACTS COVERING INTRASTATE MOVEMENTS, FORCING THE CARRIERS TO COME TO THE ICC FOR RELIEF. IN EVERY CASE, WE HAVE GRANTED THE RELIEF. IT ISN'T THE WORKLOAD THESE CASES CAUSE US THAT BOTHERS ME. LIKE TEXAS, WE HAVE MEMORY TYPEWRITERS AT THE ICC, AND SO IT DOESN'T TAKE MUCH EFFORT ON OUR PART TO OVERRULE THE TEXAS COMMISSION. WHAT BOTHERS ME IS THAT SHIPPERS AND CARRIERS ARE DENIED THE BENEFITS OF THESE CONTRACTS WHILE THE CARRIERS UNDERTAKE THE EFFORT AND EXPENSE OF FILING MOTIONS FOR RELIEF, AND TEXAS CONTINUES TO LIVE IN THE PAST.

WHILE THE COMPLAINTS FILED BY INDIVIDUAL COMPANIES AND THE DECISIONS OF CERTAIN STATE REGULATORS DO DISRUPT THE TRANSITION TO DEREGULATION, THEY ARE RELATIVELY LIMITED IN SCOPE, INVOLVING ONLY A SINGLE MOTOR CARRIER APPLICATION OR A SINGLE RAIL CONTRACT. MUCH HIGHER STAKES ARE INVOLVED IN OUR EX PARTE RULEMAKING PROCEEDINGS, AND THE EFFECTIVE PARTIES TO THESE CASES TEND TO BE INDUSTRYWIDE ASSOCIATIONS. I AM HAPPY TO SAY THAT, WITH THE EXCEPTION OF A FEW OF THE OLD-LINE CONFERENCES AT THE AMERICAN TRUCKING ASSOCIATIONS AND A FEW OF THE LESS PROGRESSIVE RATE BUREAUS, THESE INDUSTRY ORGANIZATIONS GENERALLY SEEM TO SUPPORT -- OR AT LEAST ACCEPT -- THE DEREGULATORY PROCESS TODAY.

IT WAS NOT ALWAYS THUS. SINCE 1980, WE HAVE FOUGHT OUR SHARE OF LAWSUITS WITH THESE ORGANIZATIONS. BUT THE IMPORTANT POINT IS THAT, ALONG THE WAY, THEY SEEM TO HAVE MADE THE MENTAL ADJUSTMENT AND ACCEPTED DEREGULATION. LET ME GIVE YOU SOME EXAMPLES TO ILLUSTRATE MY POINT:

- THE NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE AND THE DRUG AND TOILET PREPARATION CONFERENCE, WHICH FOR SEVERAL YEARS COULD BE COUNTED ON TO SEEK SUSPENSION AND INVESTIGATION OF EVERY PROPOSED TRUCK GENERAL RATE INCREASE THROUGH THE OLD REGULATORY MECHANISM, NOW HAVE SHIFTED GEARS. THEY HAVE ASKED US TO REVOKE THE ANTITRUST IMMUNITY MOTOR CARRIER RATE BUREAUS ENJOY FOR SHIPMENTS UNDER 1,000 POUNDS, AND DECIDED TO TAKE THEIR CHANCES IN A DEREGULATED ENVIRONMENT.

EVEN MORE ENCOURAGING, SHIPPERS IN THESE ASSOCIATIONS ARE SEEKING FREE MARKET SOLUTIONS TO THEIR PROBLEMS. JUST LAST WEEK THE CHAIRMAN OF THE NASSTRAC GAVE A MAJOR SPEECH TO A CONVENTION OF TRANSPORTATION BROKERS IN WHICH HE OUTLINED THE WAYS IN WHICH BOTH BROKERS AND SHIPPERS COULD BENEFIT IF BROKERS ENTER THE LTL MARKET, AND URGED THE BROKERS TO SEEK THIS BUSINESS.

• A NUMBER OF RATE BUREAUS, WHICH ONCE WERE AMONG THE STAUNCHEST DEFENDERS OF THE OLD REGULATORY SYSTEM, HAVE ASKED APPROVAL FOR NEW, INNOVATIVE TARIFF SYSTEMS. SEVERAL OF THE MORE PROGRESSIVE RATE BUREAUS ARE IN THE FOREFRONT OF THE TRANSITION TO AN ELECTRONIC RATE QUOTATION SYSTEM AND CLEARLY SEEM TO BE PREPARING THEMSELVES FOR LIFE AFTER ANTI-TRUST IMMUNITY. SEVERAL RATE BUREAUS HAVE EVEN ASKED FOR AUTHORITY TO GO NATIONWIDE. THESE APPLICATIONS, IF GRANTED, COULD PORTEND A SYSTEM IN WHICH THE RATE BUREAUS COMPETE WITH ONE ANOTHER FOR THE CARRIERS' BUSINESS.

• A GROWING NUMBER OF RAIL SHIPPERS ARE USING THE CONTRACT PROVISIONS OF THE STAGGERS ACT. MORE THAN 10,000 RAIL CONTRACTS ARE NOW ON FILE. CONTRARY TO THE PUBLIC'S PERCEPTION, CONTRACTS ARE NOT RESTRICTED LARGELY TO COAL SHIPMENTS AND, ALTHOUGH COAL CONTRACTS DOUBTLESS INVOLVE MORE TONNAGE AND LONGER PERIODS OF TIME THAN OTHER CONTRACTS, THEY ACCOUNT FOR ONLY ABOUT 5 PERCENT OF THE CONTRACTS ON FILE AT THE ICC. CHEMICALS AND PAPER AND LUMBER PRODUCTS EACH ACCOUNT FOR ABOUT 20 PERCENT OF THE CONTRACTS, WHILE FOODSTUFFS AND METAL PRODUCTS EACH ACCOUNT FOR ABOUT 10 PERCENT. THE REMAINING 45 PERCENT INVOLVE OTHER COMMODITIES, OR SERVICE AGREEMENTS.

EACH OF THESE CONTRACTS REPRESENTS AN INSTANCE IN WHICH A SHIPPER AND A CARRIER HAVE ABANDONED THE ADVERSARIAL RELATIONSHIP THEY HAD UNDER THE OLD, REGULATORY SYSTEM AND INSTEAD NEGOTIATED AN AGREEMENT BENEFITTING BOTH OF THEM. THIS IS WHAT TRANSPORTATION DEREGULATION IS ALL ABOUT. PERHAPS THE MOST STRIKING CONTRACT, AT LEAST SYMBOLICALLY, WAS THE ONE REACHED BY ARKANSAS POWER AND LIGHT AND THE CHICAGO & NORTH WESTERN AND UNION PACIFIC RAILWAYS. ARKANSAS POWER & LIGHT, YOU MAY REMEMBER, LENT ITS NAME TO A CASE IN WHICH THE PETITIONERS SOUGHT TO CONTINUE THE ADVERSARIAL RATEMAKING RELATIONSHIP BETWEEN CARRIERS IN SHIPPERS AND, AMONG OTHER THINGS, TO REQUIRE ELABORATE CALCULATIONS OF EACH CARRIER'S VARIABLE COSTS FOR EACH COMMODITY.

- MANY OF THE RAILROADS THAT OPPOSED BOXCAR DEREGULATION DURING OUR PROCEEDING LAST SPRING HAVE NOW ACCEPTED OUR DECISION. A FEW CARRIERS, NOTABLY THE SOUTHERN PACIFIC, HAVE ANNOUNCED THEIR CHANGE OF HEART PUBLICLY, BUT MANY MORE HAVE SIGNALLED THE CHANGE IMPLICITLY BY ENTERING INTO BILATERAL AGREEMENTS GOVERNING THE USE OF BOXCARS. I UNDERSTAND, ALTHOUGH I HAVEN'T SEEN ANYTHING IN WRITING, THAT A MAJORITY OF ASSOCIATION OF AMERICAN RAILROADS NOW ENDORSE OR ACCEPT BOXCAR DEREGULATION.

LET ME ADD THAT I UNDERSTAND THE CONCERNS THAT HAVE BEEN RAISED BY SOME CAR OWNERS AND SMALL RAILROADS, WHO FEAR THAT THEY WILL BE AT A DISADVANTAGE IN A DEREGULATED ENVIRONMENT. WE ARE LOOKING AT THE ARGUMENTS THEY HAVE RAISED VERY CAREFULLY.

I DON'T PRETEND THAT ALL THE GROUPS I HAVE MENTIONED ARE WILLING -- OR EVEN COMPLETE -- CONVERTS TO DEREGULATION. NASSTRAC, FOR EXAMPLE, MAY HAVE ASKED ITSELF, "HOW DO YOU SPELL RELIEF?" AND DECIDED THE ANSWER IS NOT I.C.C. BUT THE IMPORTANT THING IS THAT ALL OF THESE GROUPS ARE, WILLINGLY OR RELUCTANTLY, ABANDONING THE OLD REGULATORY WAY OF DOING BUSINESS AND PREPARING THEMSELVES FOR A DEREGULATED FUTURE. THEY HAVE FINALLY IMPLEMENTED THE STAGGERS AND MOTOR CARRIER ACTS MENTALLY.

I DON'T KNOW HOW MUCH LONGER IT WILL TAKE UNTIL EVERYONE IN THE TRANSPORTATON INDUSTRY HAS MADE THE MENTAL CONVERSION TO DEREGULATION, BUT I EXPECT THE PROCESS TO ACCELERATE AS TIME GOES BY AND AN INCREASING NUMBER OF PEOPLE GAIN DIRECT EXPERIENCE DOING BUSINESS IN A DEREGULATED WAY. IT SEEMS TO ME THAT, AS WITH ANY NUMBER OF EXPERIENCES IN LIFE, THE ANTICIPATION OF DEREGULATION IS MUCH WORSE THAN THE REALITY. AS COMPANIES, AND INDUSTRY ASSOCIATIONS -- AND PERHAPS, SOME DAY, EVEN SOME STATE REGULATORY COMMISSIONS -- GAIN EXPERIENCE WITH LETTING SHIPPERS AND CARRIERS WORK TOGETHER IN THE OPEN MARKETPLACE THEY WILL SEE THAT THE GOVERNMENT DOES NOT NEED TO BE THERE OFFERING TO SETTLE EVERY LITTLE DISPUTE.

ONCE AGAIN, IT IS A SPECIAL PLEASURE TO SEE ALL OF THE FRIENDS AND FAMILIAR FACES OF THE WASHINGTON WTS CHAPTER AGAIN. NOW THAT I'VE SHARED SOME OF MY THOUGHTS, I'D LIKE TO HEAR SOME OF YOURS.

FOR IMMEDIATE RELEASE
November 1, 1983

98-103
First Session

FROM THE SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE

Senator Bob Packwood (R-Oregon), Senate Commerce Committee Chairman, tonight introduced S. 2038, "Trucking Competition Act of 1983," that would eliminate all trucking regulation by 1987, except for safety and insurance requirements.

The bill would:

1. Abolish all economic regulation of the trucking industry on the effective date of the bill, which is 60 days after enactment;
2. Abolish all collective ratemaking antitrust immunity as of July 1, 1984;
3. Authorize the Interstate Commerce Commission (ICC) to exempt carriers from any remaining regulatory requirements upon the bill's effective date;
4. Require the ICC to report to Congress on January 1, 1986 as to the need to retain any regulation over the trucking industry;
5. "Sunset" the trucking functions of the ICC on January 1, 1987 and transfer safety and insurance functions to the Department of Transportation.

Senator Packwood said in a floor statement, "It is crucial that we make every effort to move forward and eliminate economic regulation of the trucking industry. My bill would achieve this important goal."

(more)

APPENDIX B

He added, "The Motor Carrier Act of 1980 took many positive steps but it is not deregulation. The time is right to address this important issue.

The Oregon Republican also noted that at the Committee's Motor Carrier Act oversight hearing last September 21 witnesses including Transportation Secretary Elizabeth Dole, Assistant Attorney General William F. Baxter, and ICC Chairman Reese Taylor gave very favorable assessments of the effects of trucking deregulation.

Senator Packwood added, "In addition, Administration, shipping community, and consumer representatives expressed support for further regulatory reform of the trucking industry."

For further information, please contact Karen B. Phillips of the Majority Staff at (202)224-4852. Press may contact Marsha Dubrow (202)224-2670.

Joe D.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

November 23, 1983

Honorable Glenn Anderson
Chairman
Subcommittee on Surface Transportation
House Public Works and Transportation
Committee
United States House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear ~~Congressman Anderson~~: Glenn

I have enclosed New York City's comments for inclusion in the record of your oversight hearings on the Bus Regulatory Reform Act of 1982 (Act). The effects of the regulatory reforms introduced by the Act are a matter of vital interest to New York City. Since we are the focal point of a very high volume of interstate travel, any action in this area has potential adverse impacts on traffic congestion, air pollution, and safety in New York City.

Sincerely,

Ed

Edward I. Koch
MAYOR

Encl.

STATEMENT SUBMITTED BY MAYOR EDWARD I. KOCH
TO THE HOUSE PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
WEDNESDAY, NOVEMBER 23,1983

I appreciate the opportunity to submit comments for inclusion in the record of your oversight hearings on the Bus Regulatory Reform Act of 1982 (Act). My observations will focus both on the impact of this Act on New York City and the implementation of the Act by the Interstate Commerce Commission (ICC).

The Bus Regulatory Reform Act has proven to be most troublesome for New York City. Specifically, the uncontrolled movement of buses providing intrastate service pursuant to ICC certification has exacerbated traffic and air pollution problems, raised safety issues, created problems in residential neighborhoods, and has had an adverse effect on existing, publicly subsidized, public and private transportation services.

From the City's perspective, the most problematic provision of the Act is its grant of intrastate jurisdiction to the ICC. The primary purpose of this provision was to "remove the problem of 'closed door' intrastate policies on interstate operations;" i.e., a State's denial of, or failure to decide a carrier's application to provide additional service to intrastate passengers between points already being served by the applicant on an interstate basis.
However, as more motor common carriers of passengers (both buses and vans) have obtained authority from the ICC to operate on our local streets, the aforementioned problems have arisen. This is particularly true where these ICC certificated carriers select their own routes, bus stops and layover areas, as has generally been the case since the Act became effective. I believe that these problems can be remedied without impairing the stated purposes of the Act.

New York City has traditionally been a hub of interstate travel, and consequently the focus of a large volume of interstate bus service. The impact of this interstate traffic on local streets has long been recognized. During the 1940's, traffic congestion in midtown Manhattan was so acute as to be considered seriously detrimental to the safety, welfare and prosperity of the City and its inhabitants. Interstate bus traffic significantly contributed to this problem. One solution was the opening of the Port Authority bus terminal in 1950 just outside of the midtown area, and the promulgation of a City traffic regulation requiring interstate buses to use an off-street terminal, such as the Port Authority bus terminal, to pickup and discharge passengers.[1] Passengers using these centralized terminals have bus and subway access to midtown or other parts of the city. This alleviated traffic congestion problems caused by interstate buses.

However, since the Act became effective in November of 1982, a growing number of interstate buses have been granted authority by the ICC to pickup and drop off passengers on local streets, thereby undermining the City's attempt to address a serious local traffic problem by the use of a centralized bus facility. Indeed, just between the hours of 3:30 p.m. and 6:30 p.m. on the week night of November 3, 1983, 76 ICC certificated buses that do not use the Port Authority Bus Terminal were sighted leaving the City through the Lincoln Tunnel, one of several major arteries leading out of the City. These buses are operating under authority granted them by the ICC.

Prior to the passage of the Act, local authorities had exclusive jurisdiction over intrastate transportation. This was true even when carriers held ICC certificates. In New York City, carriers who used local streets obtained operating authority from the City's Bureau of Franchises. As part of the franchising process, routes were designated, enabling the City to control the flow of traffic.

The Act provides that the ICC may now authorize intrastate transportation on a route over which the carrier has authority to provide interstate transportation. When the ICC issues such authorization, it generally does not designate the local streets over which the service is to be provided. Consequently, large numbers of bus operators authorized by the ICC to provide intrastate transportation services within New York City, load and unload passengers on such already crowded central avenues in Manhattan as Madison, Fifth, and Sixth in the Central Business District (defined as 34th Street to 59th Street); and in downtown Manhattan on Broadway and Church Street, south of Chambers Street. This overloading has contributed to local traffic congestion and pollution.

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[1] In 1982 alone, there were 1.8 million movements (buses entering or leaving the terminal carrying passengers for pickup and discharge in the terminal) by ICC certificated buses through this Port Authority Bus Terminal during which time a total of 53 million passengers were loaded and discharged. Six thousand two hundred bus movements took place on an average day in 1982, serving 175,000 passengers.

Bus volumes on the central midtown avenues from 5 p.m. to 6 p.m., the peak evening hour, are currently as follows: Madison Avenue -- 220 buses, Fifth Avenue -- 200 buses, Sixth Avenue -- 160 buses. An even higher volume of traffic is carried on Fifth Avenue -- 220 buses -- during the 8 a.m. to 9 a.m. morning rush hour. These avenues are close to reaching their saturation points, if they haven't already. Local bus traffic on these avenues currently moves between 4.6 and 4.9 miles per hour during the peak evening hour. This is not much faster than walking speed, which is 3.0 to 3.5 miles per hour.

Church Street in Lower Manhattan, which is open to one-way northbound traffic, is currently filled to capacity with 163 buses during the 8 a.m. to 9 a.m. morning rush hour; and Broadway, which is open to one-way southbound traffic, is currently filled to capacity with 117 buses during the 5 p.m. to 6 p.m. evening rush hour. These downtown streets are narrower than the midtown avenues and consequently have lower traffic capacities. Bus traffic on Church Street during the morning rush hour slows to a rate of 4.2 miles per hour, and on Broadway, during the evening hour, is at a rate of 6.2 miles per hour.

The problems created by the absence of route designations are not limited to increased congestion. Certain ICC carriers, while themselves attempting to avoid congestion, use side streets which are typically narrower and are often in residential neighborhoods. The residents of these streets are disturbed by the noise and safety hazards created by these buses. Certain ICC certificated carriers that operate between Atlantic City and points within New York City go through local communities as well. This has also generated a good many complaints, particularly from residents in the borough of Queens, including the areas of Bayside, Fresh Meadows, and Forest Hills.

In addition to disturbing residential neighborhoods, uncontrolled selection of routes by ICC certificated motor common carriers of passengers presents serious safety risks to the public. Certain of the streets and highways within the City have been deemed by our Department of Transportation to be unsafe for large vehicles for structural as well as geometric reasons. The City's traffic regulations close certain streets to all bus service. Since neither the ICC nor individual carriers have the intimate knowledge of the City's street system that we have, the City's assistance in selecting routing is essential.

Recognizing the severe traffic problems faced by the City, the New York State legislature has required the State Department of Transportation to obtain route approval from New York City before designating a route in the city for buses certificated by the State. It is respectfully submitted that Congress should follow suit. I believe that the inclusion of City designated routes in ICC operating certificates is feasible and would go far in addressing the problems outlined above.

Since the passage of the Act, ICC certificated buses that pickup and discharge passengers on local streets can be found laying over throughout our central business district, waiting to make their first stop. Often they layover for hours in the most congested areas, many with their engines idling in contravention of local law, creating both severe traffic and pollution problems.

The Port Authority of New York and New Jersey has 250 off-street parking spaced in lots located between 30th Street and 42nd Street. These spaces are currently leased by ICC certificated buses who layover in these facilities until they are scheduled to make pickups at the Port Authority Bus Terminal. These operators would have little or no incentive to continue leasing this off-street space if they thought that they could park, uncontrolled, on local streets.

There is a clear need for the City to control bus stops as well. Presently such ICC certificated carriers as Eagle, Academy Bus, Vanguard Interstate Tours, Inc., and Drogin stop anywhere they please in response to people who flag them down in the street. This also creates safety hazards and adds to traffic congestion and pollution problems.

We believe that the City is not precluded by the Act from exercising reasonable forms of local regulation such as requiring ICC certificated carriers to come to it for bus stop and layover approval, as do State and City authorized buses. These traffic management tools have traditionally been used by the City to reduce traffic congestion and to promote safe, adequate, economical and efficient transportation, and the use of the finite availability of street space, and can clearly be exercised without impairing interstate commerce. The cooperation of the ICC, however, is clearly needed to assure compliance with local regulations by ICC certificated bus operators. Specifically, the certificate issued by the ICC should make it clear that the grant of operating authority is premised upon the carrier's compliance with local requirements, and that failure to abide by local regulation may result in the suspension or revocation of the operating authority.

I would also like to bring to your attention the apparent conflict between the Act and the City's obligations under the Clean Air Act. To comply with the provisions of the Clean Air Act, the State and City are in the process of submitting a revised State Implementation Plan that will rely heavily on measures to control traffic in the Central Business District. The reforms introduced by the Act make it more difficult for the City to control the flow of traffic in midtown, particularly in the vicinity of known carbon monoxide (CO) "hot spots."

In addition to the CO problems presented by the uncontrolled proliferation of buses, the City is concerned about the long term adverse impacts of diesel bus emissions. There are already a large number of diesel trucks and buses operating in midtown where the physical configuration of buildings lead to a canyon effect, preventing pollutants from being dispersed. These conditions could aggravate the problem of particulates, thereby worsening air quality in the midtown area. Central bus facilities serve to reduce street level pollution. A new modern ventilation system, installed in the Port Authority Bus Terminal in the last few years, pumps exhaust fumes into the sky several hundred feet up, to be dispersed by the wind.

The problems generated by the uncontrolled proliferation of interstate carriers entering the intrastate market go beyond the traffic, pollution and safety concerns touched upon above. These buses operate primarily during the lucrative peak periods, competing with the existing public transportation services provided by commuter rail, and public and private bus carriers. Most of these carriers already rely on Federal, State and local subsidies. As a result of the reduction in ridership caused by this competition, subsidized carriers will require further governmental assistance. The joint efforts by government on all levels to maintain both commuter rush hour and off-peak hour services is consequently hampered. The ICC should be directed to take into consideration any significant adverse effect on existing subsidized public and private carriers, especially those which provide off-peak hour service.

If the ICC is to continue regulating intrastate transportation, it must do so with an understanding of the local situation, in a cooperative effort with local government, and in conformity with local policy. While Section 5 of the Act, in stating the National Transportation Policy, provides that it is the policy of the United States Government in regulating the modes of transportation subject to the Act, to cooperate with each State and the officials of each State on transportation matters, the provisions of the Act in no way foster this desired "cooperative spirit." The only means that the Act provides for input into the process is as a "protestant" (and even in this regard, the Act itself actually seems to contemplate protests by motor carriers of passengers only).

Even at such time that traffic experts in both the ICC and the City agree, for example, that certain avenues in the city are filled to capacity, under this Act the ICC must continue to grant intrastate operating authority to operators found to be "fit, willing and able," in complete disregard of local conditions, unless and until the City protests. There appears to be something fundamentally wrong if this is the "cooperative" process being provided to local government.

In addition to the detrimental effects of uncontrolled bus movements and the adverse impact on existing, subsidized public and private transportation services, the Act has generated other serious problems. As a direct result of the Act, there has been a proliferation of local and intrastate carriers who gain ICC jurisdiction by following routes that take them outside the City and/or the State through New Jersey or Connecticut for a short distance merely to avoid local and/or State jurisdiction. It has come to our attention that such carriers as Carol Coaches, Inc., (doing business as Eagle) and Academy Bus have engaged in this practice. These carriers operate from point to point within the city and would have been subject to New York City jurisdiction prior to the passage of the Act.

I am sure that Congress did not intend, in eliminating the "closed door" policies, to accommodate these pseudo-interstate operations. Rather, there was concern that the viability of interstate motor common carriers of passengers of the type presently under ICC jurisdiction was at stake. While Congress has recognized that "interstate carriers often need intrastate passengers to make their overall routes profitable," (see Senate Report 97-411 at p. 9 and House Report 97- 334 at p. 34), these pseudo-interstate carriers serve intrastate passengers only. Their intrastate service does not help them provide any identifiable interstate service. The ICC currently has jurisdiction over these operations. The Act should be amended to give the applicable locality concurrent jurisdiction over the entry of these carriers into the intrastate bus market.

In summary, the Bus Regulatory Reform Act of 1982 and its implementation by the Interstate Commerce Commission is having certain serious detrimental impacts upon the City of New York. The uncontrolled movement of buses providing intrastate bus services pursuant to ICC certification has exacerbated traffic and air pollution problems, raised safety issues, created problems in residential neighborhoods, and has had an adverse effect on existing, publicly subsidized, public and private transportation services.

The ICC should be directed by Congress to take these local concerns into account when considering an application for intrastate service. Further, the ICC should be required to include in its grant of operating authority, routes designated by the City of New York where a motor common carrier of passengers is providing an intrastate transportation service either partially or wholly within the city. The Act should be amended to give New York City concurrent jurisdiction over carriers that serve only New York City passengers and that currently avoid local jurisdiction by following a route that is outside the city for a short distance.

If the City is to effectively enforce local regulations the ICC's cooperation is needed in requiring ICC certificated carriers to obtain City approval of bus stops and layover sites. The certificate issued by the ICC should make it clear that the grant of operating authority is premised upon the carrier's compliance with local requirements, and that failure to abide by local regulation may result in the suspension or revocation of the operating authority.

Thank you for giving us the opportunity to comment on this important matter. My staff continues to remain available to you to further document New York City's concerns and offer suggestions on how the Act might be amended.

Edward Koch

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

November 15, 1983

The Honorable Glenn M. Anderson
House of Representatives

Dear Mr. Anderson:

Enclosed is our testimony on the influence of the Motor Carrier Act on Teamsters employment prepared in response to the request of October 24, 1983, of your office. It is our understanding that the testimony will be placed in the record.

Our statement concludes that the Motor Carrier Act has served to increase competition in the trucking industry thereby creating pressures for carriers to operate efficiently and moderate prices of trucking transportation. However, competitive forces in the marketplace, together with a slow economy, have contributed to a number of trucking firms going out of business and to increased layoffs of Teamsters drivers. Substantial tonnage previously hauled by predominately Teamsters general freight carriers has shifted to independent owner-operators, other existing firms and new lower cost trucking firms. While we cannot precisely distinguish the effects of the economy and deregulation, the increase in Teamsters layoffs and the decline in their share of total trucking employment in the last few years are consistent with how one would expect the trucking industry to respond to a lifting of entry and pricing restrictions.

I you have any questions or comments regarding this statement or if we can be of any further assistance to you, please contact JayEtta Hecker on 426-1735.

Sincerely yours,

Oliver W. Krueger
Oliver W. Krueger
Associate Director

Enclosure

FOR RELEASE ON DELIVERY
Expected at 9:00 a.m.
Wednesday, November 16, 1983

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

STATEMENT OF
OLIVER W. KRUEGER, ASSOCIATE DIRECTOR
RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION
BEFORE THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
ON

THE INFLUENCE OF THE MOTOR CARRIER ACT OF 1980 ON TEAMSTERS' EMPLOYMENT

Mr. Chairman and Members of the Subcommittee:

We are here today at your request to discuss the impact of regulatory reforms in the Motor Carrier Act of 1980 (the act) on Teamsters' employment. Last year we issued a report at the request of Senator DeConcini entitled "Effects of Regulatory Reform on Unemployment in the Trucking Industry," (GAO/CED-82-90, June 11, 1982). At that time we pointed out that there was a strong relationship between high trucking unemployment and the general downturn in the economy. This relationship made it hard to determine the effect of the regulatory reforms on unemployment in the trucking industry.

In recent testimony before this Subcommittee, officials of the International Brotherhood of Teamsters presented evidence of extensive layoffs among their union members since the passage of the act. In our statement today, we review this evidence in the context of an economy that has undergone a serious recession and an industry that has been substantially deregulated. We will also briefly discuss the issue of how deregulation has affected trucking service for small towns and small shippers.

GROWTH IN NUMBER OF TRUCKING FIRMS INCREASES COMPETITION

The Interstate Commerce Commission (ICC) took administrative steps to reduce the regulatory framework in the trucking industry well before the Motor Carrier Act of 1980 was passed. Beginning in 1977, ICC under its own authority, eased entry for new carriers, relaxed restrictions on carriers' operations, and expanded the area carriers could serve.

The Motor Carrier Act, while not totally deregulating the trucking industry, substantially reduced government control of the industry. The act made it easier for carriers to enter the industry, eliminated certain operating restrictions placed on regulated carriers, and encouraged greater price competition among motor carriers.

Increase in Motor Carriers

The total number of motor carriers regulated by the ICC has continually increased since entry requirements began to be eased in 1977. In 1977 over 16,000 firms were registered with the ICC; by 1982 the number of registered firms increased to over 25,000.

The Motor Carrier Act not only made it easier for new carriers to enter the marketplace, but it also expanded the geographic coverage and range of commodities the carriers were authorized to handle. In addition, the ICC has often granted carriers broader operating authorities than requested in their applications. In 1976, 6,746 applications were submitted to the ICC for new and expanded permanent operating rights, and ICC approved about 70 percent of the applications. In contrast, the number of applications increased to a high of 28,414 in 1981, but fell to 15,553 in 1982. The ICC believes that the 1982 decrease was due mostly to the recession. From 1979 through 1982, the ICC approved an average of 96 percent of the applications.

Motor Carrier Failures

While the overall number of trucking firms has increased, a number of trucking firms have failed. An official of the American Trucking Associations told us that as of June 1983, ATA has identified 233 trucking companies employing over 24,000 workers that have gone out-of-business since June 1980. An additional 41 motor carriers employing about 30,000 workers were reported to be operating under Chapter 11 of the Federal Bankruptcy Statutes. Industry sources generally attribute the causes of failure to a combination of more entrants into the industry, a declining economy, and price competition.

The net effect to date of new firms entering the industry and firms going out of business has been an increase in the number of firms in the marketplace. Between 1980 and 1982 the number of carriers regulated by the ICC increased by more than 7,600, representing an increase of about 43 percent.

PRICE COMPETITION IS INCREASING

The many new entrants into the trucking industry and the decline in economic activity since passage of the act, have combined to induce lower trucking rates. The ICC reported in October 1983 that since 1980, rates by general freight less than truckload carriers have either fallen or are increasing less rapidly than before the act. In many cases, rates were reported to be down in the range of 10 to 20 percent as a result of widespread rate reductions. A number of cases have been reported in which shippers have received reductions of up to 40 percent. The price reductions following the 1980 Act have been greater in magnitude and more extensively applied than the rate reductions offered during the 1974-75 recession, reflecting the increased competitive pressures coming from new entrants. A March 1982 Federal Trade Commission study also showed that the act and the recession have combined to create lower trucking rates. That study noted that there is no evidence that large carriers are engaging in below cost pricing to eliminate their competitors.

INCREASED COMPETITION AFFECTS BOTH INDUSTRY AND LABOR

Before the regulatory reforms were in place, regulated carriers operated in a protected environment. Competitive forces that tend to require efficiency and drive prices down were very weak. Carriers, either individually or collectively, could not, of course, charge any rates they wanted to without consideration of the demand for trucking services. However, restrictions prevented potential new entrants from competing for business and also constrained established carriers from reducing their rates without the agreement of their competitors. The system for establishing rates also failed to promote efficient operations since firms could merely pass along cost increases to shippers. The entry restrictions and ratemaking procedures combined to allow rates to remain above what they most likely would have been in a more competitive market. With entry restrictions virtually eliminated by the 1980 act, many new firms, as I have noted previously, are entering the various markets in competition with established carriers.

In the absence of a recession, one would expect that rate reductions would increase business for the trucking industry, depending on how responsive demand for trucking is to changes in price. But, deregulation would also be expected to induce shifts in business to those carriers offering service at lower rates. Often the new competitors use non-union drivers with salaries below the Teamsters' operating under the National Master Freight Agreement (Master Agreement Teamsters). The new carriers are thus in a strong position to attract business from those established carriers who are unable to reduce their wage costs. Since wages are such a large share of trucking firms' total costs, the larger the wage differential and the longer it persists, the more business low wage firms are likely to attract.

Historically, the Master Agreement Teamsters, through collective bargaining with the regulated carriers, were able to share in the additional revenues that those carriers earned because of their protected positions. The Master Agreement Teamsters have earned among the highest wages of any category of truck drivers. Although numerous factors--such as higher productivity--might have contributed to those wage levels, it is clear that regulation was also an important factor. Thus following passage of the 1980 act, the competitive environment has been accompanied by a freeze of the wages of Master Agreement Teamsters through the collective bargaining process as well as increased layoffs of those Teamsters.

Even though deregulation appears to be leading to lower costs and over time should increase business for the trucking industry as a whole, it is currently hurting carriers and drivers who are unable or unwilling to reduce wage costs sufficiently to match the new competition. As a result, layoffs of Master Agreement Teamsters and bankruptcies of previously regulated firms have been occurring at the same time as new firms employing new truck drivers enter the market.

The increased competition stimulated by the act is also leading to structural shifts in the share of tonnage hauled by general freight carriers and the share of drivers represented by Teamsters working under the Master Agreement. Since 1980, haulers of general freight, whose workers are predominately represented by the Master Agreement Teamsters, have been losing a substantial share of truck tonnage to a growing number of independent owner-operators, new truckload carriers, and some private company truck operations. Tonnage for these general freight carriers fell by 40 percent between 1979 and 1982. Data from truckstop surveys show that the percentage of union drivers for nearly all types of carriers decreased between 1978 and 1982. For example, the number of union drivers for regular route common carriers decreased from 84 percent of the total in 1978 to 70 percent in 1982, and union drivers for private carriers decreased from 32 percent in 1978 to 26 percent in 1982.

COMMENTS ON TEAMSTERS SURVEY

Let me turn now to a discussion of the data presented last month to the Subcommittee by the Teamster officials. In their study of 36 local unions, the Teamsters found that the percentage of workers with seniority rights under the Master Agreement that are on layoff has increased substantially. This study does not use a random sample of all union members. However, the Teamsters believe that the sample is sufficiently representative to allow them to estimate that the layoff rate in April of 1983 was between 29 and 36 percent. In addition, four Teamster locals provided data that showed that many of their laid off members had been on layoff for a substantial period of time.

We have not attempted to validate the Teamsters' estimates and, therefore, cannot comment on their accuracy. However, their general conclusion, that layoffs of Master Agreement Teamsters have been substantial during the last 3 years, is consistent with what one would expect when both entry and pricing restrictions are lifted. By lifting these restrictions, the government allowed new entrants to compete with established carriers by employing lower paid workers and offering lower rates to shippers. Then, when the recession set in, there was a reduction in the overall demand for trucking services. Thus, there was less tonnage to be carried by more carriers, putting substantial competitive pressures on the higher cost carriers.

We have two general observations on the Teamsters layoff study. First, the Teamsters looked only at layoffs of workers with seniority rights under the National Master Freight Agreement. Their study does not say anything about either the number of unemployed or rates of unemployment in the general trucking industry. To look at the broader effects of the act on industry employment one would have to take into account possible increases in the number of workers in the industry not represented by the Master Agreement Teamsters. Second, workers who have been laid off by union carriers do not necessarily remain laid off until they are recalled or find work with another union carrier. The Teamsters study does not say how many of the laid off workers with Master Agreement Teamsters seniority rights have found other jobs, either inside or outside the trucking industry.

The analysis of trucking industry unemployment that GAO performed last year suggested that economic conditions are very important in explaining the increase in unemployment in the trucking industry since the act was passed. Our analysis, however, focused on the entire trucking industry, not just the segment represented primarily by Master Agreement Teamsters. Labor shifts from the Master Agreement Teamsters to other segments of the industry were not measured in our analysis. As we suggested in our testimony last year, the Nation has not yet had enough experience with a deregulated environment to do the careful statistical analysis needed to determine with precision how much each factor has contributed to changes in trucking industry employment.

SERVICE TO SMALL SHIPPERS AND SMALL TOWNS

Finally, let me turn briefly to the issue of how deregulation has affected trucking services for small towns and small shippers. In their testimony last month, Teamsters officials contended that small towns and small shippers are facing much higher rate increases under deregulation than in the 1970s. To evaluate this contention we reviewed several studies of truck service to small communities and small shippers since passage of the act. The ICC and the Department of Transportation have issued reports on this subject and there have been several independent reports and articles published in trade journals.

The reports we reviewed generally found that trucking deregulation has not adversely affected service to small communities and small shippers. These studies indicate little change in the quality or availability of truck service since passage of the act. Very few shippers report deteriorating service. Most small shippers reported that rates have risen only as fast as the overall price level has increased, or have declined slightly. Where service has changed, the ICC reports these changes have, in most cases, benefitted small communities and shippers.

Although these studies are not conclusive, they do present evidence that deregulation has not had unduly adverse effects on small shippers and small communities.

In conclusion, Mr. Chairman, we believe the Motor Carrier Act of 1980, while not totally deregulating the industry, has increased competition in the trucking industry. Increased competition, in turn, tends to create pressures on firms to operate efficiently and keep prices of truck transportation lower. The competitive forces in the marketplace together with a slow economy have contributed to a number of trucking firms going out of business and to increased layoffs of Master Agreement drivers. Substantial tonnage previously hauled by general freight carriers has shifted to independent owner-operators, existing firms, and new lower cost trucking firms. While we cannot precisely distinguish the effects of the economy and deregulation, the increase in layoffs among Master Agreement Teamsters and the decline in their share of total trucking employment are consistent with how one would expect the trucking industry to respond to a lifting of entry and pricing restrictions.

Mr. Chairman, this concludes my statement. We will be glad to respond to your questions.

BROWN

TRANSPORT CORP.

Teel

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REPLY TO
P. O. BOX 6985
ATLANTA, GEORGIA 30315

November 9, 1983

Hon. Glenn M. Anderson
Chairman
Service Transportation Sub Committee
Committee on Public Works and Transportation
U. S. House of Representatives
Washington, DC 20515

RE: Oversight Hearings -
Motor Carrier Act of 1980

Dear Congressman Anderson:

Enclosed is the statement of Brown Transport Corp., a motor common carrier with headquarters in Atlanta, Georgia, for filing with your committee in connection with the Oversight Hearings being conducted on the Motor Carrier Act of 1980.

Brown was unable to testify at the hearings conducted earlier. However, we believe that the enclosed statement will assist your committee in understanding the improper manner in which the Interstate Commerce Commission is administering its statutory mandate under the Motor Carrier Act. Therefore, we request that the statement be made a part of the record. We further request that the committee use the statement as a basis for its interrogation of the Interstate Commerce Commission at the continuation of the hearings on November 16, 1983.

Yours very truly,

BROWN TRANSPORT CORP.

BKMcClain

B. K. McClain
Vice President - Special Services

BKM/wa

cc: Hon. James J. Howard
Hon. Gene Snyder
Hon. Elliott H. Levitas
Hon. Newt Gingrich
Hon. J. Roy Rowland
Hon. Bud Shuster

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE

OF THE COMMITTEE ON PUBLIC WORK AND TRANSPORTATION,

U. S. HOUSE OF REPRESENTATIVES

STATEMENT OF BROWN TRANSPORT CORP. ON OVERSIGHT - MOTOR CARRIER ACT OF 1980

I. QUALIFICATIONS

My name is B. K. McClain. My business address is 125 Milton Avenue, S.E., Atlanta, Georgia 30310. I am Vice President - Traffic of BROWN TRANSPORT CORP. [Brown]. I have been continuously engaged in traffic and transportation since 1951 and have been Vice President - Traffic of Brown for twelve years.

Brown is a common carrier by motor vehicle duly authorized by the Interstate Commerce Commission [ICC] to transport general commodities and various specified commodities between virtually all points in the continental United States, operating over both regular and irregular routes. Brown began operations in 1946 and holds operating authority from the ICC under Docket No. MC-56679 and sub-numbers thereunder. The corporate headquarters are in Atlanta, Georgia and its mailing address is 352 University Avenue, S.W., P. O. Box 6985, Atlanta, Georgia 30315. Its gross revenues in 1982 were approximately $138,000,000. Brown is a member of the Regular Common Carrier Conference and the Regional and Distribution Carrier Conference of the American Trucking Associations, Inc. and the following motor carrier rate bureaus: Southern

Motor Carrier Rate Conference, Central and Southern Motor Freight Tariff Association, Central States Motor Freight Bureau, The Eastern Central Motor Carriers Association, Middle Atlantic Conference, Middlewest Motor Freight Bureau and Rocky Mountain Motor Tariff Bureau.

Brown has been an active participant in proceedings before both the Congress and the ICC since passage of the Motor Carrier Act of 1980, Public Law 96-296 [MCA], in a continuing effort to insure that the ICC properly implements the MCA. First, Brown filed testimony with the Congress in connection with the oversight hearings of the MCA in 1981. The testimony discussed both the salutary purpose of the MCA and the harmful effects of the ICC's implementation as of that time. Second, Brown filed testimony in Ex Parte No. MC-166, Pricing Practices Of Motor Common Carriers Of Property Since The Motor Carrier Act of 1980, in which the ICC purported to seek an understanding of the evolvement of motor carrier pricing practices. In fact, the ICC did nothing more than gloss over the very real problems that exist and ignore the substantive comments criticizing the ICC's pricing policies filed by many parties, including Brown. See the ICC's report served September 13, 1983. Finally, Brown has filed a number of protests and complaints with the ICC against unsupported, unlawful operating rights applications and unlawful pricing practices of which it has become aware since passage of the MCA.

II. PURPOSE OF THE STATEMENT

The purpose of preparing this testimony is to discuss the ICC's treatment of Brown's complaints against a particularly onerous and blatantly unlawful pricing practice--the filing of conflicting, interchangeable rates for the same traffic. Unlike the useful but general discussion which often is presented in oversight hearings, Brown's testimony will provide a specific, documented example of 1) the pricing abuses which the ICC has encouraged since passage of the MCA and 2) the procedural inadequacies by which parties must pursue their grievances before an agency that has ignored completely its statutory mandate established by this Congress.

III. THE NATURE OF THE PROBLEM

The problem of conflicting, interchangeable rates for the same traffic which Brown has presented to the ICC in an as yet unsuccessful effort to cause its cessation is widespread, is a *per se* violation of certain statutes and regulations the ICC is required to enforce and a demonstrable violation of others and imposes a significant, unjustifiable burden on the shipping public and competing carriers.

The rates differ only in the amount of the discount offered by the carrier. For example, a shipment of commodity X can be transported between points A and B either for a base rate or for a rate which is discounted 5%, 10%, 15%, 20% or whatever % from the base rate. All of the rates are applicable. There are no rules of alteration or preference to guide the carrier or a shipper in determining the "correct" rate. Similarly situated shippers can have identical shipments moving in the same trailer at different rates and the same shipper can have identical shipments moving on successive (or the same) days at different rates.

The "correct" rate essentially is left to the whim of the carrier or to the ability to exert pressure by the shipper. The only mechanism for determining which rate actually will be charged is the requirement that a shipper notify the carrier by letter which discount it wishes to pay and that a carrier employee (i.e., sales representative, driver, etc.) verify the request. This procedure is made more difficult because usually the rates appear in different tariffs without any cross referencing to alert the shipper that more than one rate is available. Assuming, as often is the case, that a shipper does not have all of the carrier's tariffs, it must rely on the word of the sales representative of the carrier.

The absurdity of the scheme on its face is that no sane shipper will request a 5% discount when it can qualify for a 15% or a 20% discount. Assuming the sanity of the shipper, it is beyond question that the shipper which requests the lower discount (i.e., higher rate) cannot possibly know that it also can qualify for the lower rate merely by requesting it in writing and having its request verified.1/

1/ The purpose of the verification is not clear, but assuming that it is not to serve some nefarious, unlawful purpose like discriminating among shippers by withholding verification in certain circumstances, the purpose must be nothing more than to verify the shipper's identity.

This pricing scheme creates unlimited opportunities for the carrier to discriminate among shippers. The sales representative makes known to the shipper only that level of discount which he feels will be sufficient to gain the traffic. Moreover, for all practical purposes the scheme prohibits the ICC or the general public (shippers and carriers) from detecting the violations because no one knows what rate is charged to what shipper. The scheme also is an unfair competitive advantage over carriers which comply with the law by publishing one rate and, thus, cannot vary the rate on a per shipment basis as needed to obtain traffic.

The scheme violates the Interstate Commerce Act and the ICC's own regulations in a myriad of ways:

1) A carrier is prohibited from filing duplicate or conflicting rates on the same traffic. 49 C.F.R. §1310.7(j).
2) A carrier can provide transportation only if the rate is in a tariff and cannot charge a different rate. 49 U.S.C. §10761(a). If multiple rates exist, obviously some rates which are in the tariff are not charged.
3) A carrier may not discriminate unreasonably among shippers, i.e., offer different rates to similarly situated shippers. 49 U.S.C. §§10101(a) and 10741(b); 49 C.F.R. §§1004.2(c) and 1004.3(f).
4) A carrier must charge reasonable rates that do not constitute a destructive competitive practice. 49 U.S.C. §§10101(a) and 10701(a).

5) A carrier may not give a rebate or "buy" traffic. 49 U.S.C. §11902; 49 C.F.R. §1004.3(f).

6) A carrier must publish tariffs which are susceptible to a ready understanding and application. 49 C.F.R. §1310.7(a).

The tariffs and rates which Brown has challenged violate each of these provisions.

IV. BROWN'S COMPLAINTS AND THE COMMISSION'S REACTION

In an effort to stop what is unquestionably an unlawful practice, Brown has filed four complaints which will be identified by their ICC docket numbers as follows: No. 38863, No. 38862F, No. MC-C-10841 and No. MC-C-10878. The first complaint was filed in March, 1982. The last complaint was filed in September, 1983. Despite having pursued this issue vigorously for more than eighteen months, Brown still is far from having a definitive resolution to the problem or even a meaningful response from the ICC.

Because Brown feels that the ICC's cavalier attitude toward a very serious violation of the statute is at least as serious as the violation itself, it will discuss the ICC's treatment of the complaints. Only in that way can Congress understand fully the ICC's total abdication of its mandate since 1980.

As a threshold matter, it is important to understand that the determinative facts supporting each complaint and the underlying legal principle which is violated are the same. Only the identity of the carriers and the amount and number of discounts varies.

Therefore, a decision in one proceeding should be applicable to all. However, unfortunately this has not been the case.

Administrative law judge decisions were issued in the first two proceedings--No. 38863 and No. 38862F in December, 1982 and January, 1983, respectively. The decisions were virtually identical, held the practice to be unreasonably discriminatory and ordered the discrimination removed from the tariffs. No. 38863 was not appealed by the carrier, probably because it went bankrupt shortly thereafter, nor was it reconsidered by the ICC on its own motion. Therefore, it became a final order of the ICC in January, 1983. No. 38862F was appealed in January, 1983, which automatically stays the ALJ decision and allows the tariff to stay in effect, and it is still pending before the ICC over nine months later.

Under the more responsible ICCs of the past, No. 38863 should have put an end to the practice of duplicate rates because carriers would have realized that the ICC would strike down similar tariffs. But we are living in a new and different era. Such tariffs continue to proliferate, and the ICC refuses to act even when specific violations are presented to it. The long pending appeal in No. 38862F, in which the essential facts are identical to No. 38863 is a prime example. In August, 1983, Brown wrote the ICC asking that a decision be rendered and was advised that the issue was complex and far reaching, a rationalization which is belied by the straight forward condemnation of the practice in the two ALJ decisions.

No. MC-C-10841 is another excellent example of the ICC's refusal to act. Brown began its challenge of this carrier's rates in September, 1982. There are fourteen levels of rates each set forth in a different tariff--the base rate and discounts of 5%, 10%, 15%, 18%, 21%, 24%, 27%, 30%, 33%, 36%, 39%, 42%, 45% and 48%. The initial challenge was with an "employee" board of the ICC. On January 21, 1983, the Suspension Board suspended and agreed to investigate four of the tariffs but refused to incorporate the other ten. The offending carrier has never responded in that I&S proceeding so in April, 1983, Brown asked the ICC to act on its protest. To date it has had no response to the protest or the request to act.

Because the ten tariffs omitted from the I&S proceeding were identical in all material respects with the tariffs under investigation, Brown filed a complaint in February, 1983, encompassing all fourteen tariffs. Both sides filed discovery. Brown responded to the other carrier's request; however, in August, 1983, Brown had to file a motion to compel responses to its discovery, which also has not been acted upon. Probably the most frustrating thing about MC-C-10841 is that nine months after the complaint was filed the ICC has not even established a schedule for filing evidence, much less acted upon the complaint.2/

2/ Congress should note that as part of the procedural reform adopted in the MCA, the ICC is required to issue an initial decision within 180 days, when no oral hearing is held, and an appeal within 50 days after filing. 49 U.S.C. §10322(b) and (f). Obviously, the ICC has ignored the standards in both No. 38862F and No. MC-C-10841.

Whatever deterrent the "final" decision in No. 38863 may have been to filing these tariffs, it has long since dissipated. Carriers can publish the duplicate tariffs confident in their knowledge that the ICC will allow them to remain in effect even if a complaint is filed against them.

The absurdity of trying to get the ICC to acknowledge and address a blatant and unquestionable violation of the Interstate Commerce Act and the ICC's regulations is epitomized by the appeal of the ALJ's decision by the offending carrier in No. 38862F. The rationale expressed by that carrier will serve as an apt conclusion to Brown's testimony.

The carrier first sought to overcome the ALJ's decision by including the technical argument that only a shipper, and not a carrier, can allege discrimination. Even if this were true, the ICC has the power to initiate investigations on its own motion, as this offending carrier itself candidly admitted. Having been alerted to the problem, the ICC should take appropriate action.

The real argument the carrier made, however, had nothing to do with the merits or legality of the tariffs. Rather, the argument was that the ALJ's decision (and Brown's complaint) was ". . . flatly in conflict with the ICC's well-publicized policy of 'benign neglect' with respect to rate discounts." The carrier then went on to argue that if its tariffs are found to be unlawful, the ICC, in the alternative, should institute an investigation of similar tariffs filed by other carriers. It proceeded to identify by carrier and by tariff a significant number.

The carrier professes to have to file the tariffs only to remain competitive and therein lies the problem. Not only is the scheme of conflicting, interchangeable rates unlawful because it works a hardship on shippers and carriers alike, but the ICC's refusal to address the problem has caused the spread of this "cancer" throughout the industry. This was not the intention of Congress in making the practice unlawful or in making the ICC the "watchdog" of motor carrier regulation.

Respectfully submitted,

B. K. McClain
Vice President - Traffic
Brown Transport Corp.

VERIFICATION

STATE OF GEORGIA)
) ss:
COUNTY OF FULTON)

I, B. K. McClain, being duly sworn, state that I have read the foregoing testimony to be presented before the Surface Transportation Subcommittee of the Committee on Public Works and Transportation, U. S. House of Representatives, know the contents thereof, and that the statements made and the matters set forth therein are true and correct to the best of my knowledge and belief.

B. K. McClain

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 7th day of November, 1983.

Notary Public

My commission expires: My Commission Expires Dec. [illegible]

FLATONIA CITY HALL

CITY OF FLATONIA

November 1, 1983

Committee on Public Works
and Transportation
U. S. House of Representatives
Room 2165 Rayburn House Office Building
Washington, D. C. 20515

Re: Testimony on Oversight of the Bus Regulatory Reform Act of 1982

To The Honorable Members of the House Subcommitte on Surface Transportation:

My name is Ernest Mica and I am Mayor of the City of Flatonia. Flatonia is located in the south central part of Texas, and has a population of approximately 1,070 people. Flatonia has varied manufacturing industry, including machine parts, refining, and oilfield supplies.

We appreciate the opportunity to present our views to your subcommittee on the Bus Regulatory Reform Act of 1982. In our opinion, this hearing is quite timely in view of a pending application filed by Greyhound Lines, Inc. to discontinue service completely to Flatonia, along with 58 other cities and towns in Texas. At the hearing held on Greyhound's application before the Railroad Commission of Texas, many of our citizens presented testimony against Greyhound's proposal, because of this need for both bus passenger and express package service. In Flatonia, there exists no real alternative to bus service for the receipt of such critical items as medical and veterinary supplies.

Many of our residents rely on bus service to receive essential medical care or to conduct their businesses. Specifically, there are cancer patients who reside in and near our city that depend on bus service as their only method of traveling to large cities, such as Houston and San Antonio to receive chemotherapy treatment. These patients cannot afford any other type of travel, such as taxi service, even if it were available. In addition, a number of veterans in our town also depend on bus service to travel to VA hospitals to receive medical attention.

125 East South Main • P.O. Box 375 • Flatonia, Texas 78941 • (512) 865-3548

CITY OF FLATONIA

FLATONIA CITY HALL

November 1, 1983
Page 2

Greyhound's abandonment of service at Flatonia is based on the provisions of the Bus Act of 1982. If Greyhound is allowed to stop serving Flatonia, we will have no bus service, even though Greyhound will continue, as it does currently, to make 16 trips daily between San Antonio and Houston (3 in each direction) and will travel within 1 mile of Flatonia. However, Greyhound does not propose to maintain even a "flag stop" at Flatonia. A flag stop would be of no benefit to Flatonia.

In closing, we believe that there is a demonstrated public need for bus service, particularly that of Greyhound, to and from the City of Flatonia. We do not believe that our city should be penalized with poor or no service just because we are not as large as Houston or San Antonio. Thank you for your consideration of our testimony.

Yours truly,

Ernest Mica, Mayor
City of Flatonia, Texas

EM:djw

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THE FERTILIZER INSTITUTE
1015 18th Street, N.W.
Washington, D.C. 20036

GARY D. MYERS
President

(202) 861-4900
Telex: 89-2699

October 24, 1983

The Honorable Glenn M. Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Anderson:

On behalf of the U.S. fertilizer industry, we respectfully request that this letter be entered into the record as The Fertilizer Institute's comments in regard to the House Public Works and Transportation Committee October 25, 1983 Oversight hearing on the Motor Carrier Act of 1980 (P.L. 96-296).

Our comments are directed solely at Section 30 of the law. As enacted, it has placed an unnecessary financial burden on farmers and fertilizer retail dealers engaged in local, non-bulk distribution of fertilizer materials across state lines.

Section 30 prescribes a five-million minimum level of financial responsibility (covering public liability, property damage and environment liability) for for-hire and private carriage involved in interstate and intrastate transportation of hazardous materials. The law, however, gave the U.S. Department of Transportation the authority to issue regulations requiring higher or lower levels of financial responsibility.

In passing the Act, Congress was concerned as to the effect this legislation would have on businesses transporting small quantities of hazardous material. Therefore, Congress enacted Section 30 (b)(3)(B), which states:

> "in the case of any class of vehicles transporting any such material, oil, substance, or waste in intrastate commerce other than in bulk, the Secretary, by regulation, may reduce such amount if the Secretary finds that such reduction will not adversely affect public safety."

Congress was further concerned that the Secretary of Transportation exercise the authority granted under Section 30 (b)(3)(B) so -- "that local operations dealing with only small quantities of hazardous material will not be unduly burdened." (H.R. Report 96-1069, pg. 44). The Department of Transportation issued its final regulations regarding minimum levels of financing responsibility for motor carriers on June 11, 1981, and following the direction of Congress, stated in part:

> "It is therefore believed that, as to intrastate carriage of non-bulk hazardous materials, existing State laws and requirements adequately protect the public safety in those states and variations amongst such state requirements reflect the considered judgments of the respective state legislatures. Consequently, it has been decided to use the authority under Section 30 (b)(3)(B) to effectively exempt intrastate carriers on non-bulk hazardous materials from this rule."

Section 30 (b)(3)(B) of the Act provided the Department of Transportation flexibility to reduce financial responsibility levels for non-bulk intrastate transportation. However, this flexibility was not extended to interstate commerce. Thus, farmers and retail fertilizer dealers, engaged in local non-bulk fertilizer transportation -- albeit across state lines -- must meet the minimum levels of financial responsibility established by DOT. The intrastate transportation of the same material however, is exempted by regulation from meeting the requirements of Section 30.

Congress must address the local transportation of small quantities of hazardous material across state lines. We suggest that Section 30 be amended to allow the Secretary of Transportation, by regulation, to reduce the minimum financial responsibility for interstate commerce of non-bulk hazardous material. Such action would remove from the law an inequity that we submit Congress did not intend to occur.

We would be pleased to discuss this further with you or your staff and to supply additional information regarding this request.

Sincerely,

Gary D. Myers

GDM:pc

STATEMENT
OF THE
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
BEFORE THE
HOUSE PUBLIC WORKS COMMITTEE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
NOVEMBER 16, 1983

The National Association of Independent Insurers is a trade association representing more than 530 property and casualty insurance companies. Almost all of these companies have been affected by the insurance provisions of the Motor Carrier Reform Act of 1980. Based on that experience, NAII recommends that the current lower limits of liability be continued and that compliance with the insurance requirements also be tied to DOT's hazardous materials placarding requirements.

Since the Act was signed into law in mid-1980, NAII has closely monitored the insurance aspects of the Act and their effect on our member companies and the industry at large.

NAII continues to dispute the rationale used for imposing federal mandatory insurance requirements. However, we are pleased to report that from our perspective, the insurance industry has responded positively to the requirements of the Act and the resulting regulations promulgated by the Department of Transportation.

The industry has had very little difficulty in providing the coverage and limits of financial responsibility required under the act. The ease in complying with the requirements in great part has been due to the high degree of cooperation between the representatives of the DOT and the industry in agreeing on common sense approaches to a number of critical issues.

There is another reason that availability and affordability of insurance has not been a problem and that is the continuing phenomenon of what we refer to as a "soft market." That is, there has been tremendous financial capacity in the insurance market which has resulted in strenuous competition for business. It is questionable how long this condition will last.

We think that another key to the success of the program has been the ability to delay implementation of the extremely high limits of financial liability ultimately required under the Act. We have previously testified that it is our belief that the present limits of liability are sufficient to satisfy liability claims arising from the vast majority of accidents reported and consequently adequate protection is afforded to the public. We would like to recommend that the Department of Transportation be given the authority and responsibility to determine the limits of liability based on developed data and that the higher limits of liability should not automatically be imposed on July 1, 1984.

One problem we did have and to a certain extent are still having, is that when the Act was implemented there was no notification procedure. As a result, there was a great deal of confusion as to who actually came under the Act. We have some feelings yet that there may be a fairly high degree of noncompliance because of ignorance of the requirements of the Act. The

Department of Transportation had previously recommended that compliance under the Act should be tied to the DOT's hazardous materials placarding requirements. NAII would like to voice its strong support for that recommendation.

In conclusion, we think things have gone quite smoothly and we foresee no change in this condition particularly if our recommendations for the continuance of the present lower limits of liability and the tying in of compliance to the placarding requirements are adopted.

* * *

NATIONAL LP-GAS ASSOCIATION
1235 JEFFERSON DAVIS HWY., STE. 702 NLPGA ARLINGTON, VIRGINIA 22202

JOHN H. VALDES
DIRECTOR, LEGISLATIVE SERVICES
& ASSISTANT COUNSEL

Phone 703/979-3563

November 23, 1983
File: 285.4/83-15

The Honorable Glenn M. Anderson
Committee on Public Works and
  Transportation
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Anderson:

The National LP-Gas Association (NLPGA) submits the following comments regarding the Motor Carrier Act of 1980, and asks that they be included in the record of the November 16, 1983, oversight hearings held by the Subcommittee on Surface Transportation.

NLPGA is the national trade association of the LP-gas industry with a membership of over 4100 including 47 affiliated state and regional LP-gas associations representing all 50 states. All segments of the LP-gas (principally propane) industry, including transporters, wholesalers, and retail dealers, are represented by NLPGA. Our members own over 25,000 transport and delivery trucks operating in both interstate and intrastate commerce, in private and for-hire carriage. Over 93% of the LP-gas shipped in the United States travels by tank truck at one time or another.

We are concerned with the provisions of Section 30, Minimum Levels of Financial Responsibility for Motor Carriers. We do not believe that the statutory purpose of enhancing safety is furthered by the financial responsibility requirements. Indeed, the safety of motor carrier operations may well be adversely affected by Section 30.

The vast majority of NLPGA members are small businesses, often family-owned operations. As small businesses, these members are disproportionately affected by federal regulation applied across the board to all businesses within an industry. Our members must strictly allocate funds available for safety concerns. We believe driver training and vehicle maintenance programs provide the greatest accident prevention per dollar spent. The large financial responsibility requirements of Section 30 could result in the diversion of limited funds from driver training and vehicle maintenance to insurance premiums. We believe this would create a sacrifice of accident avoidance in favor of the possibility of increased ability to pay for accidents sustained. This, we are sure, is as unacceptable to Congress as it is to us.

The purpose of insurance is to spread the risk of liability incurred, not liability avoidance. Motor carriers with bad accident records are not denied insurance. They are placed in an insurance pool as assigned risks. This, however, does not enhance safety. One does not become an assigned risk until one has established a poor performance record. In other words, the accidents have already occurred and still Section 30 does not provide safety from accidents, only liability protection for future accidents.

If Congress believes there is merit in mandatory minimum levels of financial responsibility, then we would support a grant of discretionary authority to the Secretary of Transportation to establish the appropriate levels. Such discretionary authority would provide an opportunity to establish limits based upon on-the-record findings of need, and flexibility to adjust limits as needs change.

Since the July 1, 1981, effective date for Section 30, the financial responsibility limits have been set by the Secretary's exercise of a phase-in discretionary authority. The loss history during this period is testimony to the wisdom of establishing limits by rulemaking. Liability limits have proven adequate and safety program dollars have not been unnecessarily diverted to insurance premiums.

We believe this loss history confirms that there is no magic in the limits which are established in the Motor Carrier Act of 1980. We therefore urge you to rescind Section 30 entirely or, in the alternative, to authorize the Secretary of Transportation to set minimum levels of financial responsibility based on appropriate rulemakings. We believe the result will be the most efficacious combination of accident avoidance and public protection.

Respectfully submitted,

John H. Valdes

John H. Valdes
Director of Legislative
Services

JHV:pc

National Governors' Association

James R. Thompson
Governor of Illinois
Chairman

Raymond C. Scheppach
Executive Director

November 1, 1983

RECEIVED
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OFFICE OF JAMES J. [illegible]

The Honorable James J. Howard
Chairman, Committee on Public
Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The governors support the intent of the Bus Regulatory Reform Act — to foster competition within the intercity bus industry. There is concern among the states, however, that intercity bus service to rural communities may be largely discontinued as bus carriers take advantage of freedoms granted them under the Bus Act. We feel that simple modifications to the Act could give states the flexibility to preserve existing service or to find replacement carriers.

Enclosed is a statement submitted for the Committee on Public Work's hearing record expressing NGA's concerns and recommendations. As you move toward enacting legislation, we urge you to include the following points:

- a revised abandonment procedure that includes prior notice to the states of a bus company's plans for route abandonment;
- close cooperation and consultation between Interstate Commerce Commission (ICC) and the states on ICC grants of new route authority; and
- state regulation of scheduling when only a minimal level of service is offered to prevent carriers from intentionally discouraging passenger ridership.

The governors are not proposing enactment of cumbersome state requirements or re-regulation of the industry, but the preservation of service to rural communities is imperative to provide mobility for the elderly, young, handicapped and low-income passengers who have no other reasonable means of transportation available to them.

If you or your staff have questions or require additional information on this issue, please contact Charilyn Cowan, Staff Director of the Committee on Transportation, Commerce and Communications at (202) 624-7814.

Thank you for your attention and consideration of these important issues.

Sincerely,

Robert D. Orr

Governor Robert D. Orr, Chairman
Committee on Transportation, Commerce
and Communications

Enclosure
cc: Members, Committee on Public Works and Transportation

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

National Governors' Association

James R. Thompson
Governor of Illinois
Chairman

Raymond C. Scheppach
Executive Director

STATEMENT OF

THE HONORABLE ROBERT D. ORR

GOVERNOR OF INDIANA

CHAIRMAN, COMMITTEE ON TRANSPORTATION, COMMERCE AND COMMUNICATIONS

before the

SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

October 26, 1983

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

Bus Regulatory Reform Act of 1982

Mr. Chairman, your committee is to be commended for initiating oversight of implementation of the Bus Regulatory Reform Act of 1982. This statement for the record is presented in my capacity both as the governor of a largely rural Midwest state and as Chairman of the National Governors' Association Committee on Transportation, Commerce, and Communications.

At the August 1983, annual meeting of the National Governors' Association, the governors adopted new policy relating to intercity bus transportation. The action was taken in the wake of Congressional enactment of the Bus Regulatory Reform Act of 1982. The governors support the intent of the Act - to foster competition within the intercity bus industry. However, the governors feel that some moderate adjustments could be made to the Act without compromising its basic goals. Simple modifications could give the states the tools necessary to attempt preservation of existing service or to find replacement carriers.

There is concern among the states that intercity bus service to rural communities will be largely discontinued as bus carriers take advantage of freedoms granted them under the Bus Act. By not receiving advance notification of abandonments, states and communities are precluded from designing enticements to preserve service and disadvantaged in locating substitute carriers. Since implementation of the Act, abandonment petitions have been filed for over 1000 communities nationwide with additional abandonments expected in the future. Very few new bus companies have surfaced to fill the vacancies and some industry analysts fear that some marginal companies and small operators may soon face bankruptcy or will discontinue their regular route operations entirely. Rural routes are bearing the brunt of service abandonments. The reason is elementary: the Bus Act's emphasis on the revenue to variable cost test in evaluating the public need for service. Rural routes are generally unprofitable, which makes them unattractive for new carriers. Yet rural areas have the greatest need for bus service because other transportation alternatives are usually unavailable to them.

The market entry standards of the Bus Act, designed to provide bus companies with greater freedom to enter into markets or expand existing operations, also allow carriers to compete against another carrier's profitable routes. This results in smaller profits for the incumbent carrier to support marginal or unprofitable routes. The problem is further aggravated by deregulation of charter service which many bus companies have traditionally used to cross-subsidize regular route service. Deregulation has led to overcapacity of charter service which in turn has reduced the profit margins for many companies.

Finally, provisions of the Bus Act place severe timing and informational constraints on the states in hearing abandonment cases, and if a state denial is appealed to the Interstate Commerce Commission (ICC), the ICC has neither the statutory leeway nor apparently the inclination to support the state decision. When adopting the Bus Regulatory Reform Act, Congress amended the National Transportation Policy to clearly state the goal of providing and maintaining service to small communities. It was intended that the ICC consider the impact of service changes on small towns whenever appropriate. In so doing, the ICC was charged with striking a delicate balance between the need to eliminate excessive regulation and provide for increased competition in the industry, with the need to insure service in all areas of the country. We believe there is legislative history to indicate the Congress meant that no area should be inadvertently harmed. However, there is growing concern that in its zeal to deregulate transportation, the ICC will ignore the statutorily—mandated criteria by which small communites are supposed to be protected from unwarranted abandonments.

Indeed, Congress intended that the ICC would work with local communities to ensure that the best case was presented on their behalf in abandonment cases. Yet the ICC majority recently recommended to the Office of Management and Budget that the fiscal 1985 budget for the ICC Office of Special Counsel be totally eliminated. This office is precisely the arm of the ICC that is charged with assisting local communities. Coupled with its nearly unbroken string of reversals of state decisions on abandonments, the ICC hardly demonstrates any concern whatsoever for rural communities.

The results of deregulation have not been as anticipated. Consumer benefits have been mixed with those most dependent on the service suffering. The rapid increase in abandonments of bus service to rural communities concerns many states. Some changes to the disorderly abandonment process must be made and some safeguards implemented to protect small communities from isolation. The absence of meaningful public participation in a matter of significant local importance should be corrected. States need more cooperation and consultation with the ICC so that the Commission will not inadvertently negate efforts to sustain service to rural communities. Service will only be maintained to rural communities if the states are given the time and information needed to work with local communities and bus companies to either generate a subsidy or attract a substitute carrier. Given sufficient lead time and flexibility, states can provide assistance to local governments to ensure continuation of service to those dependent on intercity bus transportation.

In the policy adopted this summer, the governors urge the federal government, in close cooperation with the states, local communities and private companies, to investigate the adverse effect of the Bus Regulatory Reform Act on service to small communities and to explore adjustments to the law to preserve or replace essential service.

Specifically, the governors propose:

- A revised abandonment procedure which includes prior notice to the states of a bus company's plans for route abandonment;

- Close cooperation and consultation between the ICC and the states on Commission grants of new route authority; and

- State regulation of scheduling when only a minimal level of service is offered to prevent carriers from intentionally discouraging passenger ridership.

The states are well equipped to act as information clearinghouses. Working with local communities, states can assist companies in identifying riders, juggling schedule and route structures, advertising, securing government and business cargo contracts, providing a subsidy to offset cost disadvantages, and luring replacement service. Further, states and locals could promote establishment of new companies by providing tax benefits and other assistance to reduce risks confronting interested entrepreneurs. A major impediment to ridership would be removed by guaranteeing consistent, reliable service.

Legislation (H.R. 4067, S. 1916) has been introduced to require advance notice to states of discontinuance or service reductions. The notice of intent would provide state officials with information not only on where a route termination is proposed, but would identify the number of passengers and amount of revenues derived in the past year. This information would prove invaluable to state planners in developing assistance programs for the affected services, or for recruiting new carriers to provide service.

The governors are not proposing enactment of cumbersome state requirements or re-regulation of the industry. We believe an orderly approach to regulatory reform is possible without complicated oversight or interference. While undertaking the admirable objectives of deregulation, it must be understood that maintenance of intercity bus transportation for rural areas is of critical importance to any locality. The preservation of service to these communities is imperative to continue to provide mobility for the elderly, young, handicapped and low-income passengers who have no other reasonable means of transportation available to them.

The opportunity to present the views of the National Governors' Association to your Committee for consideration is very much appreciated.

Public Service Commission
State of North Dakota

COMMISSIONERS
Bruce Hagen
President
Leo M. Reinbold
Dale V. Sandstrom
Secretary, Janet A. Elkin

Capitol Building
Bismarck, North Dakota 58505
(701) 224-2400

5

January 10, 1984

The Honorable Glenn M. Anderson
U.S. House of Representatives
Washington, D.C. 20515

RE: H.R. 4067, A Bill Proposing Amendments to the Bus Regulatory Reform Act of 1982

Dear Representative Anderson:

The North Dakota Public Service Commission is a constitutionally created agency that is charged with, among other things, the responsibility of regulating intrastate transportation services. The Commission also represents North Dakota's transportation interests at the interstate level. It is for these reasons that we urge you to support H.R. 4067.

The Bus Regulatory Reform Act of 1982 provides little notice or protection for rural communities that are faced with the loss of local bus service. H.R. 4067 proposes to rectify these shortcomings.

The notice requirements of this bill are not excessively burdensome and do, in fact, closely parallel statutes which govern rail line abandonments. In those proceedings rail carriers are required to annually publish a "system diagram map" to identify lines that are probable candidates for abandonment. Railroads are also required to publish a "notice of intent to abandon" before they actually seek authority to abandon a line. These requirements guarantee adequate notice prior to a rail abandonment and allow affected persons and communities time to find a way to rectify the carrier's financial burden and thereby retain service or to make plans to function without service.

Page two
January 10, 1984

This system works well within the rail industry for carriers and affected communities and shippers alike. Similar requirements should be instituted for the bus industry. We therefore urge your support of H.R. 4067.

Sincerely,

Bruce Hagen
Bruce Hagen, President

Leo M. Reinbold
Leo M. Reinbold, Commissioner

Dale V. Sandstrom, Commissioner

JM/kd
208D

PHYLLIS ROBINSON
STATE REPRESENTATIVE
P.O. BOX 2910
AUSTIN, TEXAS 78769-2910
512-475-3722

The State of Texas
House of Representatives
Austin, Texas

STAFF:
LILLIAN PEARSON
REBECCA HERRON

October 21, 1983

The Honorable James J. Howard
U.S. Representative-New Jersey
U.S. House of Representatives
Room 2165 Rayburn House Office Building
Washington, D.C. 20515

Attention: Caryll Rinehart

RE: Subcommittee on Surface Transportation on Bus Regulatory Reform Act of 1982.

Dear Mr. Howard:

I take this opportunity to express my grave concern about the possible discontinuance of Greyhound bus service in Gonzales County and other routes in Texas. For many months I have been working closely with interested citizens and County and State Officials who are worried that a vital transportation link between our small community and Houston and San Antonio may be severed.

People from Gonzales and surrounding communities would be adversely affected if Greyhound is allowed to discontinue service; for example:

- Gonzales Memorial Hospital is totally dependent on this Greyhound route for receiving blood and blood components. If the hospital does not maintain the necessary unit level, tragic consequences could result. In addition to blood, other medical supplies are transported via Greyhound bus to Gonzales Memorial Hospital and Gonzales Warm Springs Hospital for their use.
- Merchants in Gonzales, Waelder, Belmont, and the other small towns along Interstate 10 between Houston and San Antonio rely on this route to ship and receive merchandise that otherwise would be difficult to obtain. The regular freight delivery provided by the San Antonio-Houston route is an integral part of the local economy.

DISTRICT 31: CALDWELL, DeWITT, GOLIAD, GONZALES
JACKSON, LAVACA

- For many of our elderly citizens, this route is the only means they have for transportation to Houston and San Antonio for needed medical treatment which is not available locally. There would also be a severe hardship placed on indigent patients who may have only the bus to transport them to state-supported John Sealy Hospital in Galveston. In addition, problems would be created for those who must travel to the Audie Murphy Veterans Memorial Hospital and Santa Rosa Children's Hospital in San Antonio, as well as the M.D. Anderson Hospital and Cancer Clinic in Houston.

I strongly urge you to aid us in sustaining the Texas Railroad Commission's decision to deny Greyhound's application to discontinue several routes in Texas. It is my hope that the Interstate Commerce Commission will favorable consider my evidence to continue these much needed bus routes.

Sincerely yours,

Phyllis Robinson

PHYLLIS ROBINSON

PR/jld

Joe F

State of New York

Metropolitan
Transportation
Authority

347 Madison Avenue New York, New York 10017 Phone 212 878-7000

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Executive Director
David Z. Plavin

November 15, 1983

S

Honorable Glenn M. Anderson
Chairman, Subcommittee on Surface Transportation
United States House of Representatives
2329 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Anderson:

This letter is in reference to your oversight hearings on the Bus Regulatory Reform Act of 1982 (P.L. 97-2761).

The Metropolitan Transportation Authority is the public transportation agency of the State of New York which includes the New York City Transit Authority, the Metro-North Commuter Railroad Company, the Metropolitan Suburban Bus Authority, and the Long Island Rail Road Company. All of these operations are subsidized by the Federal, State, and local governments.

The MTA recommends that certain changes be made in the Act to better carry out its intent as expressed both in the national transportation policy set out at section five of the Act, and in the specific provisions relating to certification, and that abuses of the law now occuring be curbed.

Our railroad, bus, and rapid transit operations are adversely affected by the Act as it now stands, contrary to the Act's expressed policy of preserving several modes of transportation, encouraging reasonable rates for transportation, encouraging sound economic conditions among carriers, discouraging destructive competition, and cooperating with state and local governments. The problem derives from the ease with which interstate carriers may be certified for intrastate service. Prior to the passage of the Act, an interstate carrier could not pick up and discharge passengers within New York State without State approval. State law affords protection to public transportation by taking into account the impact of a proposed bus service on a public transportation service, and the adequacy of the public service. (Ch. 635, N.Y. State Laws of 1983)

Section six of the Act attempts to take into account direct competition and significant adverse impact, but the category protected, "commuter bus operations" is underinclusive, excluding both our commuter rail operations, and our bus and subway services, which, although their service areas are as large as commutation areas elsewhere, do not employ reduced-fare, multiple-ride, or commutation tickets. The Act should be amended to give the same protection to commuter rail, and bus and transit services which people use to commute to and from work as is presently provided for commuter buses as defined in the Act. There is no public policy reason to distinguish between the presently protected category and other commuter services which are being adversely affected by destructive "skimming."

The subcommittee should take note of the widespread abuse of the Act by motor carriers which in fact operate in New York only, but which establish minimal ties to Connecticut or New Jersey in order to benefit from the relaxed standards of the ICC under the Act. One such carrier derives its "interstate" character from the fact that it traverses - in the "closed door" mode- a small section of Interstate 684 which happens to pass through Connecticut. Another starts its service just across the Connecticut line in a parking lot and comes into New York before picking up or discharging passengers. Both of these carriers severely impact our Metro-North Commuter Railroad, which has taken over the chronically deficit-ridden ConRail (previously Penn Central) service north and east of New York City. The enormous federal investment in this rail service over the years certainly justifies a reasonable protection of it. The competing motor carriers obviously do not duplicate the complete service of the railroad, nor do their services permit the railroad to cut back its service. They simply "skim" the railroad ridership, causing unit costs to rise.

Another abuse of the same type is found in several motor carriers which originate in New Jersey, cross the Bayonne Bridge into Staten Island without passengers and compete directly with express buses operated by the New York City Transit Authority between Staten Island, Brooklyn and Manhattan, having a significant adverse impact.

Section six of the Act requires a showing that the transportation to be authorized is consistent with the public interest. The situations described above are clearly not in the public interest, nor could such a showing have been made.

The ICC should require an applicant for intrastate authority to give notice of its application by mail to all public bus,rapid transit, and commuter railroad operators with which it may be in competition if the applicaton is granted. Requiring all public operators to follow the ICC Register to identify among all the applicants those whose service may compete is burdensome and does not result in actual notice.

The ICC should require that an applicant set forth the impact on public commuter bus, rail or transit operations if the application is granted. It is reasonable to expect a bus line which is seeking to enter a new market to plan for such entry, including marketing surveys to determine whether its service will generate additional ridership or merely divert ridership. The burden should be upon the applicant, in the first instance, to establish the impact.

The Interstate Commerce Commission should also expressly authorize and encourage the use of stipulations between an applicant and protestants. This is not expressly provided for in current regulations. We have been advised that the ICC generally does not incorporate such stipulations into its grants of authority. In one situation, we have entered into a stipulation which we believe balances our concerns and those of the applicant. It is our experience, under New York State regulatory practice, that such stipulations can reasonably balance all interests concerned including the public interest, and avoid unnecessary adjudications. We do not, however, have any assurance that the ICC will accept the stipulation. A regulation should provide for this procedure.

Sincerely,

Daniel T. Scannell
Acting Chairman

Sec I

Irwin H. Silberman & Associates, Inc.

ECONOMISTS

10528 Kentsdale Drive

Potomac, Maryland 20854

(301) 299-2950

November 11, 1983

S

Honorable Glenn Anderson, Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U. S. House of Representatives
Washington, D. C.

Dear Congressman Anderson:

In the course of the Subcommittee's October 25, 1983 Hearing on the Motor Carrier Act of 1980, Mr. James H. Edler of American Greetings, testifying on behalf of the National Industrial Transportation League, made several statements purporting to describe the recent earnings experience of general freight trucking. Specifically, Mr. Edler indicated his reliance on an August 15, 1983 article appearing in Business Week magazine, as well as upon an article published in Transport Topics, October 17, 1983. Both of these articles deal with the financial results experienced during the second quarter of 1983, results which Mr. Edler alleges my testimony failed to consider.

I am writing to you because I wish to correct the errors and distortions contained throughout Mr. Edler's written and oral testimony before the Subcommittee. I address some of these below.

Edler: "In the second quarter of 1983, the operating revenues of motor carriers increased 132 percent" (Transcript, page 173)

Fact: Revenues of the surveyed carriers in the second quarter of 1983 were down from the levels achieved in the second quarter of 1982.

Mr. Edler should have reported that operating income was up by 132 percent over the 1982 level.

But the reader should recall from my testimony (page 5) that operating income in 1982 was insufficient to cover interest expense.

Mr. Edler claims to be referring to a *Transport Topics* article, October 17, 1983, page 138. That article begins as follows: "Tonnage and revenues for general freight motor carriers in the second quarter of 1983 were down slightly compared to the same 1982 period...."

Edler: "Now, these data [discussed above] are collected from 163 motor carriers belonging to the Regular Common Carrier Conference of the American Trucking Association. And I do believe they represent the same group that Dr. Silberman was talking about. However, he did not talk about the second quarter of 1983." (Transcript, page 173)

Fact: The tabulation of 163 carriers discussed in the *Transport Topics* article is *not* the same group of carriers as those included in my study.

Despite Mr. Edler's assertion that I did not talk about the second quarter of 1983, pages 18-20 of my testimony deal exclusively with the *first-half* of 1983, which includes both the first and second quarters of 1983.

Edler: "When the figures were compared for the second quarter performance, the profits were even more impressive...."
"... while, Arkansas Best's profits jumped 169 percent over those generated during the second quarter of 1982." (Transcript, page 165)

Fact: Mr. Edler misreads the profit improvement data for the *Business Week* composite as well as for individual companies in the *Business Week* listing. Thus, he speaks of "second quarter" performance, though the data he cites relate to the first six months of 1983. He errs in asserting that Arkansas Best experienced a 169 percent improvement in profitability in the second quarter. The *Business Week* listing indicates that the percentage improvement for Arkansas Best is not meaningfully measured, since it experienced losses in 1982.

Mr. Edler fails to point out that "performance" according to the *Business Week* ranking indicates *improvement* or *deterioration*, rather than absolute profitability. Thus, since the trucking return on equity was close to zero in 1982, we should expect that any positive level of profits in 1983 will yield a substantial percentage improvement.

Honorable Glenn Anderson, Chairman
November 11, 1983
Page 3

It is inappropriate for Mr. Edler to suggest that this Subcommittee assess the ability of general commodity trucking to survive based on a simple listing of profitability improvement for ten companies. For example, three of those ten carriers (Leaseway Transportation, Mayflower and RLC) are not classified as general commodity carriers by Standard and Poor's. Of the remaining seven, Arkansas Best and Transcon experienced losses in the second quarter of 1982, so that any positive profitability in 1983 results in a sharp improvement in profitability.

Mr. Edler's testimony contains several additional instances of misleading data and deficient interpretation. The examples above are intended primarily to forewarn the reader of the Transcript.

I very much appreciate the opportunity to participate in this Hearing.

Sincerely yours,

Irwin H. Silberman

Irwin H. Silberman

IHS:ss

MAYOR
CARROLL E. WILEY

COUNCILMEN
WM. E. (BILL) SHELTON
GREG C. TIEKEN
JESSE HIDALGO
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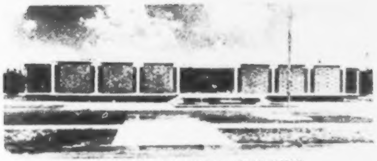

GONZALES MUNICIPAL BUILDING

CITY MANAGER
CALVIN E. SPACEK

CITY SECRETARY
DOUGLAS W. LEIST

CITY ATTORNEY
EDWARD B. RATHER, JR.

CITY HEALTH OFFICER
WALTER A. SIEVERS, M.D.

City of Gonzales

820 St. Joseph Street *Phone: 672-2815*
P. O. Box 212
Gonzales, Texas

November 3, 1983

Committee on Public Works
and Transportation
U. S. House of Representatives
Room 2165 Rayburn House Office Building
Washington, D. C. 20515

Re: Testimony on Oversight of the Bus Regulatory Reform Act of 1982

To The Honorable Members of the House of Subcommittee on Surface Transporation:

My name is Carroll Wiley and I am Mayor of the City of Gonzales, Texas. Gonzales is located in the south central part of Texas, and has a population of approximately 7,100 people. We appreciate the opportunity of presenting testimony to your subcommittee concerning the Bus Regulatory Reform Act of 1982.

In our view, this hearing is particularly significant because of an application that Greyhound Lines, Inc. filed with the Railroad Commission of Texas. In its application, Greyhound sought to discontinue service to 58 Texas points, including the City of Gonzales. Citizens from our town, as well as many other people from other towns and cities affected by Greyhound's proposal appeared and presented testimony in opposition to Greyhound's application. After the Railroad Commission denied Greyhound's application, Greyhound proceeded to file a similar petition with the Interstate Commerce Commission. In its proposal, Greyhound seeks to not only to abandon passenger service to Gonzales, but also to discontinue freight service. The loss of the present level of bus service in our opinion will impair the ability of many of the shippers and receivers located in Gonzales to function because of a lack of parts and supplies. This is especially true in situations where expedited service is needed.

Veterinarians in our town have indicated to us a particular need that exists for bus service. Their need concerns the sending of specimens to the Texas Department of Health in Austin, Texas, to be tested for rabies or other diseases. Inasmuch as there is only a 24-hour time period which can elapse before tissue degeneration commences, bus service is the only method of transportation available that will allow veterinarians to ship within this allotted time period. In addition, loss of bus service would certainly cause a shortage of urgently needed medical supplies such as fresh blood that can be received only by bus. In fact, representatives of various hospitals and nursing home facilties in our community have indicated that without continued bus service, they would have no way to receive and send shipments of blood, specimens, medicines, vaccines, x-rays, and other items necessary to the functioning of their facilities. These representatives have indicated that when there is a mechanical failure at one of their facilities, parts which are needed quickly might not be available without the prompt and reliable service which is provided by our present bus service. In certain cases, lack of prompt service can be life-threatening.

There are also a large number of elderly and poor people in our town who have no other means of transportation besides the bus service that is now available to them. Further, without adequate transportation service of the type provided by the existing level of bus service, we believe it will be difficult, if not impossible, to attract new industry to our community.

As a consequence, loss of bus service to our community would be highly detrimental. Therefore, for the reasons set forth above, we sincerely hope that your committee will do everything in its power to help preserve the existing level of bus service to Gonzales, and other similar communities.

Yours truly,

Carroll Wiley

Carroll Wiley, Mayor
City of Gonzales, Texas

CW/sgp